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4 HEARING ON ``INTERNET PRIVACY: THE VIEWS OF THE FTC, THE FCC,  
5 AND NTIA''

6 THURSDAY, JULY 14, 2011

7 House of Representatives,

8 Subcommittee on Commerce, Manufacturing, and Trade

9 joint with the

10 Subcommittee on Communications and Technology

11 Committee on Energy and Commerce

12 Washington, D.C.

13 The subcommittees met, pursuant to call, at 11:05 a.m.,  
14 in Room 2123 of the Rayburn House Office Building, Hon. Mary  
15 Bono Mack [Chairwoman of the Subcommittee on Commerce,  
16 Manufacturing, and Trade] presiding.

17 Members present from the Subcommittee on Commerce,  
18 Manufacturing, and Trade: Representatives Bono Mack,

19 Blackburn, Stearns, Bass, Harper, Lance, Cassidy, Olson,  
20 McKinley, Pompeo, Butterfield, Rush, Schakowsky, and Waxman  
21 (ex officio).

22 Members present from the Subcommittee on Communications  
23 and Technology: Representatives Walden, Terry, Bilbray,  
24 Gingrey, Scalise, Latta, Guthrie, Kinzinger, Barton, Upton  
25 (ex officio), Eshoo, Markey, Matsui, Barrow, and DeGette.

26 Staff present: Jim Barnette, General Counsel; Ray Baum,  
27 Senior Policy Advisor/Director of Coalitions; Allison Busbee,  
28 Legislative Clerk; Paul Cancienne, Policy Coordinator,  
29 Commerce, Manufacturing, and Trade; Neil Fried, Chief  
30 Counsel, Communications and Technology; Brian McCullough,  
31 Senior Professional Staff Member, Commerce, Manufacturing,  
32 and Trade; Jeff Mortier, Professional Staff Member; Gib  
33 Mullan, Chief Counsel, Commerce, Manufacturing, and Trade;  
34 David Redl, Counsel, Telecom; Shannon Weinberg, Counsel,  
35 Commerce, Manufacturing, and Trade; Michelle Ash, Chief  
36 Counsel; Roger Sherman, Chief Counsel; Felipe Mendoza,  
37 Counsel; William Wallace, Policy Analyst; Sarah Fisher,  
38 Policy Analyst; and Alex Reynolds, Legal Intern.

|  
39 Mrs. {Bono Mack.} Please come to order. Good morning.

40 From data breaches in the United States to a cell phone  
41 hacking scandal in Great Britain, consumer privacy has become  
42 part of our national consciousness. Today, we have a unique  
43 opportunity to make a real difference in the lives of  
44 millions of Americans, and I look forward to working with  
45 Chairman Walden and members of both of our subcommittees on  
46 this unique challenge.

47 We often hear that privacy laws in Europe are much  
48 stricter than they are in the U.S., and if that is so, it is  
49 hard to understand how the phone hacking incidents in Britain  
50 could have gotten so far out of hand. It raises the question  
51 of whether American consumers are as vulnerable as  
52 politicians and celebrities in London. I hope that Chairman  
53 Genachowski will address this issue as we continue to gather  
54 facts.

55 The chair now recognizes herself for an opening  
56 statement.

57 This morning, we begin a very important and, some say,  
58 long-overdue debate. When it comes to the internet, how do  
59 we--as Congress and as Americans--balance the need to remain  
60 innovative with the need to protect privacy?

61 The explosive growth of technology has made it possible

62 to collect information about consumers in increasingly  
63 sophisticated ways. Sometimes the collection and the use of  
64 this information is extremely beneficial; other times, it is  
65 not. Frankly, I am somewhat skeptical right now of both  
66 industry and government. I don't believe industry has proven  
67 that it is doing enough to protect American consumers, while  
68 government, unfortunately, tends to overreach whenever it  
69 comes to new regulations. That is why this debate must be  
70 deliberate and thoughtful, but without question, it is time  
71 for this debate to take place.

72       Even though it serves billions of users worldwide--and  
73 this year e-commerce in the U.S. will top \$200 billion for  
74 the first time--the internet pretty much remains a work in  
75 progress. Still, in just 25 years, the internet already has  
76 spurred transformative innovations. It has indefinite value  
77 and it has become a part of our daily lives. And it has  
78 unlimited potential to affect positive social and political  
79 change, as the world dramatically witnessed during the Arab  
80 Spring.

81       But the internet has brought about more subtle cultural  
82 changes as well. Think about it for a second. If a total  
83 stranger knocked on your door one day and asked you for your  
84 name, your birthday, your relationship status, your number of  
85 children, your educational background, email address, and

86 Social Security number, would you give that information out  
87 freely? Probably not.

88         Yet today, as consumers, we willingly dole out this  
89 personally identifiable information online--literally bit by  
90 bit. This information is then compiled and collated by  
91 computers to produce personal profiles used in online  
92 behavioral marketing and advertising. This data mining helps  
93 to pay the freight for all of the information that we get for  
94 free on the internet. But does it come at too great of an  
95 expense to consumer privacy? That question cuts to the heart  
96 of this very important issue.

97         Applications providers continue to increase the variety  
98 of tools available to American consumers to control their  
99 privacy settings, but a nagging problem for most consumers is  
100 the lack of a basic understanding about how companies use and  
101 collect this information. While survey after survey  
102 indicates that consumers harbor serious concerns about their  
103 privacy, it is unproven and unclear whether more stringent  
104 laws and regulations relating to the collection and use of  
105 data will satisfy these concerns in a way that encourages  
106 continued innovation and an expansion of electronic commerce.

107         As Congress takes a closer look at online privacy  
108 issues, industry has stepped up its self-regulatory efforts  
109 relating to the collection and use of consumer information.

110 These industry-wide efforts include expanded consumer  
111 education and site transparency to increase consumer comfort  
112 with how industry uses their information, as well as the  
113 development of new preference profiles so consumers can  
114 personalize their browsing experience and control just how  
115 much information they actually want to share.

116       As I listen closely to all of your thoughts, I would  
117 also like to share a few of my own with you. First and  
118 foremost, greater transparency is needed to empower  
119 consumers. While it is still unclear to me whether  
120 government regulations are really needed, providing consumers  
121 with more transparency is the first step in better protecting  
122 Americans.

123       Consumers should be notified promptly if there is a  
124 material change in a privacy policy; no bait-and-switch  
125 schemes should be allowed nor tolerated.

126       Sensitive information should have greater safeguards in  
127 place, especially when it comes to financial and personal  
128 health records.

129       We should take a long look at how our children are  
130 treated online and how they are marketed to.

131       And we need to closely re-examine privacy laws that are  
132 currently on the books. Do we need a single regulator to  
133 protect consumer privacy? While I personally support this

134 concept, we should first look at its potential impact on  
135 consumers.

136         And finally, what part should ``no harm, no foul'' play  
137 in this debate? Over the last few months, the FTC and the  
138 Department of Commerce have issued extensive reports  
139 concerning online privacy. However, there is little proof of  
140 any substantive consumer harm. Before regulations are  
141 enacted, there should be a ``definable'' problem such as we  
142 are seeing in the area of data protection.

143         As we move ahead with our hearings, I look forward to a  
144 robust discussion with all of my colleagues on the committee  
145 as well as industry and consumer groups. Working together,  
146 we can make innovation and privacy a shared priority, and the  
147 internet will be the eighth Wonder of the World.

148         And now I would like to recognize the gentleman from  
149 North Carolina, Mr. Butterfield, the ranking member of the  
150 Subcommittee on Commerce, Manufacturing, and Trade for 5  
151 minutes for his opening statement.

152         [The prepared statement of Mrs. Bono Mack follows:]

153         \*\*\*\*\* COMMITTEE INSERT \*\*\*\*\*

|  
154           Mr. {Butterfield.} Let me inquire. Was it my  
155 understanding that this side was going to be allowed 20  
156 minutes to make opening statements and I can yield those as I  
157 see fit? Is that right?

158           Mrs. {Bono Mack.} I will yield them for you.

159           Mr. {Butterfield.} I see. That will be fine. That  
160 will be fine.

161           Let me thank the two chairmen for holding today's joint  
162 hearing on internet privacy. I look forward to the testimony  
163 from the three witnesses as we begin to talk about this very  
164 important issue. I also look forward to learning how  
165 Congress can better equip these three agencies so that we can  
166 best protect American's online privacy.

167           With nearly every aspect of our lives now containing an  
168 online component, it is vitally important that American's  
169 have reasonable protections for the personal information held  
170 and sold by the data-gathering industry. That personal  
171 information can include specific websites a user has visited,  
172 how long they spent on that website, whether or not they  
173 purchased something, what they purchased, and what they  
174 looked at while they were there. It can even record their  
175 keystrokes. The personal information is collected often  
176 without a user's knowledge and without their consent.

177           When a website installs tiny files on a user's computer  
178 to record internet activity, these files are called cookies  
179 or flash cookies or beacons. While the term ``cookie''  
180 doesn't sound particularly invasive, a recent investigation  
181 by the Wall Street Journal found that a test computer  
182 visiting the 50 most popular websites resulted in more than  
183 2,000 cookies being installed without notification or consent  
184 on the test computer. What is worse is that the top 50  
185 websites directed at children placed substantially more  
186 tracking files on visitors' computers than general audience  
187 websites. The Wall Street Journal found children's websites  
188 place 4,100 cookies and other tracking mechanisms on their  
189 test computer, again, without notice or consent.

190           Even more concerning is that the data-gathering industry  
191 has developed ways to marry online data with offline data  
192 like warranty cards and property records and voter  
193 registration records and even driver's licenses to build  
194 super-files that are sold for pennies. Some companies are  
195 even using these super-files to differentiate which of the  
196 same type of product they will offer to potential customers.  
197 For example, a life insurance clearing house website tested a  
198 system that would recommend different policies based on the  
199 personal information contained in the files. This practice  
200 is called ``boxing,'' and I would argue that it is nothing

201 more than a high-tech form of economic and social  
202 discrimination.

203         In addition, having all this data in one place puts  
204 Americans at risk of other more traditional high-tech harms  
205 like identity theft and fraud. It is clear that businesses  
206 need to collect some information for their operational needs.  
207 Beyond that, however, I think it is well past the time to put  
208 in place some clear and comprehensive rules to let consumers  
209 know and exercise some control over what data gatherers can  
210 collect, how they can collect, and what they can do with it  
211 once they have it.

212         Madam Chairman, I hope you will work with me to craft  
213 legislation that will safeguard American's personal  
214 information so they can continue to use the amazing and  
215 infinite potential of the internet in the safest and most  
216 secure ways possible.

217         Thank you. I yield back the balance of my time.

218         [The prepared statement of Mr. Butterfield follows:]

219 \*\*\*\*\* COMMITTEE INSERT \*\*\*\*\*

|  
220 Mrs. {Bono Mack.} I thank the gentleman. The chair now  
221 recognizes Mr. Walden, Chairman of the Subcommittee on  
222 Communications and Technology, for 5 minutes.

223 Mr. {Walden.} Thank you, Madam Chairman. I want to  
224 welcome our witnesses.

225 As consumers are increasingly living their lives on the  
226 Internet--and even more on their Smartphones--concern is  
227 obviously growing over electronic communications privacy.  
228 Indeed, the Energy and Commerce Committee has taken an active  
229 role in investigating online privacy in the last few  
230 Congresses. Mr. Barton, for example, has sought out  
231 information from a number of companies about their practices  
232 regarding internet advertising and consumers' online  
233 information. Members of the committee have reached out to  
234 Google about privacy concerns arising from ``Google Buzz,''  
235 as well as their collection of data from personal Wi-Fi  
236 networks, something I know the FCC is examining.

237 And just this past April, Chairman Upton, Chairwoman  
238 Bono Mack, and myself, along with our Democratic colleagues,  
239 also sent letters to several mobile operating system  
240 providers such as Apple asking hard questions about the  
241 location-based services they provide and about the privacy  
242 protections attached to those services. And both the

243 Communications and Technology and the Commerce,  
244 Manufacturing, and Trade Subcommittees have had a number of  
245 hearings in recent years.

246         Now, we are having this hearing because we want to make  
247 sure Americans have adequate information regarding how data  
248 about them and their internet use is collected, used, and  
249 shared, and to make sure their privacy is protected. But we  
250 must balance that need with the recognition that regulatory  
251 overreach could curb the ability of entrepreneurs to invest,  
252 innovate, and create jobs and new technologies. At this  
253 point, it is not clear what legislation--if any--is  
254 necessary, but this hearing will help shed light on this  
255 question.

256         As we move forward, one thing stands out in my mind:  
257 Today's regime is neither competitively nor technologically  
258 neutral. Section 222 of the Communications Act gives the  
259 Federal Communications Commission broad authority to  
260 implement privacy protections for consumers of wireline and  
261 wireless telephone services. Section 222 also specifically  
262 calls out location-based services for regulation, but applies  
263 that regulation only to carriers and not providers of  
264 devices, operating systems, or applications. Other parts of  
265 the Communications Act give the Commission authority over  
266 cable operators and satellite television providers under a

267 ``prior consent'' framework.

268         In stark contrast, there are few if any communications  
269 privacy regulations governing web-based companies, even those  
270 that can access a user's search queries, emails, voice and  
271 video online conversations, web browser, and even operating  
272 systems. So why should a wireless provider that transmits  
273 data to and from a Smartphone be subject to federal oversight  
274 but not an operating system provider that has access to the  
275 exact same data?

276         If we move forward with legislation, how do we create a  
277 fair playing field? Do we regulate web-based companies up?  
278 Do we deregulate traditional phone and video companies down?  
279 Do we create a unified regime at the FCC? At the FTC? Or do  
280 we have both agencies administer equivalent regimes over  
281 different subsets of companies or devices?

282         So I look forward to hearing from our witnesses on what  
283 steps they are taking on electronic communications privacy  
284 and what recommendations they have for us as we examine these  
285 issues.

286         One more thing: Although we are here today to talk about  
287 internet privacy, I want to echo Mrs. Bono Mack's concerns  
288 about what happened in the United Kingdom. And I will be  
289 interested in hearing from Chairman Genachowski if things  
290 like this have happened in the United States, whether it

291 falls within the FCC's purview and, if so, what the FCC and  
292 other federal agencies typically do about it.

293         With that, I appreciate the opportunity to share those  
294 comments and yield the balance of my time to the vice  
295 chairman of the Communications and Technology Subcommittee,  
296 the gentleman from Nebraska, Mr. Terry.

297         [The prepared statement of Mr. Walden follows:]

298 \*\*\*\*\* COMMITTEE INSERT \*\*\*\*\*

|  
299 Mr. {Terry.} Thank you, Mr. Chairman.

300 And this is a necessary hearing and I want to thank our  
301 panel. It is a powerhouse panel and I thank you for coming  
302 up here, Mr. Strickling. I think we should have an office  
303 for you you are up here so much anymore.

304 I think two words or two principles regarding privacy  
305 policy--one is balance and the next is transparency. There  
306 is no doubt that if there is one drawback or inhibition about  
307 ecommerce, it is the consumers fear over violation of  
308 privacy. We know when we do a transaction online that we  
309 have to provide information to the entity that we are doing  
310 business with or engaging in some type of commerce with.  
311 What we don't expect--unless it is transparent and open to us  
312 to help make our decision--is the use of that data. It has  
313 to be easy for the consumer and for the company but also  
314 something that everyone knows up front.

315 What we can't have and what degrades the confidence is  
316 what has occurred with Google Buzz, a trusted company that  
317 now has obtained personal information and we have no idea  
318 what it can be used for or will be used for. Or when major  
319 companies or entities hack to obtain personal information.  
320 All of these things should be clear. They are not  
321 transparent. There is no balance involved in those and that

322 is what we need to deal with.

323 [The prepared statement of Mr. Terry follows:]

324 \*\*\*\*\* COMMITTEE INSERT \*\*\*\*\*

|  
325           Mrs. {Bono Mack.} I thank the chair and the vice chair  
326 and I am happy to now recognize the ranking member of the  
327 Communications and Technology Subcommittee, Ms. Eshoo, for  
328 her 5 minutes.

329           Ms. {Eshoo.} Thank you, Madam Chair. It is nice to see  
330 you in the chair.

331           Today marks our first joint subcommittee hearing of the  
332 112th Congress on internet privacy. And I welcome it and  
333 welcome the distinguished witnesses that we are going to hear  
334 from.

335           The government agencies that are testifying today have  
336 taken initial steps to address the issue of internet privacy,  
337 but I think we need a unified approach that leverages the  
338 expertise of both the public and the private sectors. The  
339 FTC has conducted a series of roundtables exploring privacy  
340 issues and has proposed a framework for approaching these  
341 issues. The FCC brings years of experience managing  
342 communications, privacy issues dating back to wiretap  
343 legislation in the late 1960s. And the NTIA has played a  
344 significant role in establishing the Department of Commerce's  
345 Internet Policy Taskforce's Report on Commercial Data Privacy  
346 and Innovation in the Internet Economy. That is a real  
347 mouthful. There should be some acronym for that I guess.

348           Personal privacy is, I believe, a very closely held  
349 American value. I think it is in our DNA. We don't want the  
350 government to know; we don't want companies to know. We just  
351 hold it very, very close. And today, information is shared  
352 more freely and faster than ever before, especially by the  
353 younger generation. We need in our country a comprehensive  
354 approach to privacy. And it may be appropriate to start by  
355 updating the rules protecting children online.

356           Children on the internet share photos, email addresses  
357 and phone numbers with friends and family. There are  
358 advancements in Smartphone technology, which enables parents  
359 to monitor the location of their children. But based on a  
360 town hall meeting that I had on the issue, parents need an  
361 awful lot of education on this. They have a sense of what is  
362 going on but they don't know what to do with it or how to.

363           The Children's Online Privacy Protection Act enacted  
364 more than 10 years ago--I can't believe that over a decade  
365 has passed since we did that--never really anticipated these  
366 advancements. So whether dealing with children, teens, or  
367 adults, transparency really needs to be the coin of the  
368 realm. It should be the central focus of ours.

369           Consumers should know what personal information is being  
370 collected, how it is being used, and who has access to that  
371 data. At a minimum, companies should be required to disclose

372 if they buy or sell consumers' information or if they track  
373 the whereabouts of consumers even after they have left a  
374 company's website. Both the public and private sectors have  
375 a lot to do to educate consumers and businesses and ensure  
376 that the collection of data is done in a transparent and  
377 secure manner.

378 I think it is also important that we don't overlook the  
379 proactive steps being taken by industry to enhance user  
380 privacy. According to Facebook, almost 35 percent of their  
381 350 million users customize their privacy settings using  
382 options provided by the company. Similarly, millions of  
383 users of the popular web browser Mozilla Firefox install add-  
384 ons to prevent online advertisers from collecting their  
385 information. And Reputation.com, based in my district, is  
386 developing tools to help consumers and businesses protect  
387 their online privacy. But it is spotty. There isn't  
388 anything that ties all of this together and I think that is  
389 why we are here today.

390 So I think with the right balance, we can protect  
391 privacy without inhibiting job creation and the development  
392 of new innovative data-driven apps and services. There is  
393 such a demand for that in our country and we don't want to  
394 stand in the way of it. Our government agencies have a  
395 difficult task ahead of them, I think. Each of our agency

396 witnesses today is going to provide an expert view on the  
397 issue of internet privacy and I really look forward to  
398 hearing what you have to say.

399           Specifically, I would like to know what each agency  
400 thinks their role should be, what their hand is in this, and  
401 how we can leverage the wide range of online privacy tools  
402 developed by the private sector because it is both. And how  
403 do we increase coordination between government agencies, as  
404 well as industry?

405           At this point, Madam Chair, it has been mentioned today,  
406 I would like to call on the chairman of the full committee to  
407 use the jurisdictions of this committee to probe the whole  
408 issue of privacy, hacking, and this burgeoning scandal of  
409 News Corporation. It fits with the subject matter that we  
410 are here in a joint hearing today for. This is one of the  
411 most powerful committees in the Congress. We certainly have  
412 the jurisdiction and I think it needs to be exercised.

413           So again, I welcome the panel and I thank you for the  
414 testimony that you are going to give and look forward to  
415 hearing it.

416           And I yield back.

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

418 \*\*\*\*\* COMMITTEE INSERT \*\*\*\*\*

|  
419 Mrs. {Bono Mack.} The gentlelady's time has expired.  
420 And the chair is pleased to recognize the chairman of the  
421 full committee, Mr. Upton, for 3 minutes.

422 The {Chairman.} Thank you, Madam Chair. I am excited  
423 about the hearing. This committee has been at the forefront  
424 of protecting the privacy of Americans for many, many years.  
425 And that mission certainly continues today.

426 When I became chairman of this great committee about 6  
427 months ago, I guaranteed that our focus would be on jobs, the  
428 economy, and the preservation of individual freedoms. And I  
429 ask everyone to look at our mid-year report, which we  
430 released last week. There is a good deal in there about the  
431 literally millions--hundreds of thousands of jobs that this  
432 committee has worked to protect and create.

433 Today, though, we begin a very thorough analysis of what  
434 has become an essential freedom for all Americans. The  
435 internet has changed all of our lives in so many ways. Our  
436 freedom--unlike that elsewhere in the world--to use the  
437 internet for information, commercial purposes, consumer  
438 needs, even healthcare--is unrivalled. And anyone who has  
439 access to a computer, even a Blackberry, has access to the  
440 entire world. But that freedom also brings some very serious  
441 challenges. Privacy is chief among them.

442           So I commend these two subcommittees for holding this  
443 hearing. And as we begin the effort, it is entirely  
444 appropriate to hear first from our federal witnesses, and I  
445 certainly welcome them.

446           But I want to get the issue right. We all do. It is  
447 not and should not be partisan in any way and I don't believe  
448 that it is. If it means that the CMT and the C and T  
449 Subcommittees, even Oversight, need to hold multiple  
450 hearings, so be it. We need to hear from everyone with a  
451 stake in internet privacy before we contemplate legislating.

452           I yield now the balance of time to the gentlelady from  
453 Tennessee, Ms. Blackburn.

454           [The prepared statement of Mr. Upton follows:]

455 \*\*\*\*\* COMMITTEE INSERT \*\*\*\*\*

|  
456 Mrs. {Blackburn.} Thank you, Mr. Chairman.

457 And to add a couple of points to the discussion as we  
458 move forward with our witnesses today--whom we do welcome and  
459 we appreciate your being here--we should bear in mind that  
460 online advertising sales, online ad revenue totaled \$31  
461 billion last year and that represented 40 percent of global  
462 online sales. That spending sustains much of our free press  
463 and free content online. That is something we should be  
464 mindful on as we look at regulation in a space that really is  
465 growing by leaps and bounds, creating jobs, and providing  
466 consumers with a dynamic platform for free content and  
467 innovative services. I think the European-style Do Not Track  
468 technology would short-circuit much of this innovation. And  
469 as Chairman Bono Mack said, it did not stop this situation  
470 there in the U.K.

471 I think that what we also have to do is be mindful of  
472 moving forward with anything where there is an ill-defined  
473 harm standard without respect to the cost that would be  
474 placed on private innovators and on the industry that is  
475 experiencing growth. We need to be cautious, thoughtful, and  
476 well-measured in our approach to this evolving issue.

477 And I yield back my time.

478 [The prepared statement of Mrs. Blackburn follows:]

479 \*\*\*\*\* COMMITTEE INSERT \*\*\*\*\*

|  
480 Mrs. {Bono Mack.} I thank the gentlelady. And the  
481 chair now recognizes Mr. Stearns for 1 minute.

482 Mr. {Stearns.} Thank you, Madam Chair.

483 Having had some experience developing privacy bills--I  
484 had with Jim Matheson from Utah this H.R. 1528, the Consumer  
485 Privacy Protection Act of 2011--and having been through these  
486 hearings, one of the things that clearly came out is exactly  
487 what you said, Madam Chairman, when you talked about  
488 consumers want transparency and a basic understanding of how  
489 their information is used. That came out time and time again  
490 so you are absolutely right there.

491 And I think that when we look at this very important  
492 issue and I listen to stakeholders, I find that, Madam Chair,  
493 that the stakeholders by and large would like to know if  
494 there is one agency that has jurisdiction so they know where  
495 to go to, how to comply, and we are not careful and we had  
496 this jurisdiction that is moved between two or three  
497 government agencies can make it more difficult. So I think  
498 one of the things that we have today is a hearing to talk  
499 about jurisdiction. And I hope in the end that we won't have  
500 competing jurisdiction and we will have at least one central  
501 agency with this jurisdiction.

502 Thank you.

503 [The prepared statement of Mr. Stearns follows:]

504 \*\*\*\*\* COMMITTEE INSERT \*\*\*\*\*

|  
505           Mrs. {Bono Mack.} Thank the gentleman. And the chair  
506 now recognizes the ranking member of the full committee, Mr.  
507 Waxman, for 5 minutes.

508           Mr. {Waxman.} I want to thank our Chairs Bono Mack and  
509 Walden for holding this hearing today.

510           As the Wall Street Journal just pointed out, firms are  
511 stripping away our internet users' anonymity and ``gaining  
512 the ability to decide whether or not you would be a good  
513 customer before you tell them a single thing about  
514 yourself.'' The collection, use, and dissemination of  
515 consumer information provides many benefits to consumers,  
516 businesses, and the marketplace, but they raise legitimate  
517 concerns about whether consumers have adequate control over  
518 personal information that is shared.

519           Sophisticated business models and rapidly evolving  
520 technologies allow vast amounts of data to be collected,  
521 aggregated, analyzed, mined, and sold in ways that were  
522 unimaginable only 10 years ago. Many of these business  
523 practices conflict with consumers' expectation of privacy.

524           I understand that the Republican majority is weary of  
525 passing any piece of legislation that calls for new  
526 regulations. We have heard the repeated calls for self-  
527 regulation. The problem is that self-regulation isn't

528 working. Just this week, Stanford researcher Jonathan Mayer  
529 reported in Tracking the Trackers that eight members of the  
530 self-regulatory group Network Advertising Initiative, NAI,  
531 seemed to outright violate their own privacy policies. That  
532 is nearly 13 percent of the 64 companies investigated. In  
533 addition, NAI is just one of many self-regulatory efforts.  
534 So the consumer is not left knowing where to turn.

535         Furthermore, even if the firms were complying, the self-  
536 regulatory efforts seem to be limited to allowing the  
537 consumer to opt out of behaviorally targeted advertising, but  
538 not the collection of information that makes targeting  
539 possible. The Tracking of the Trackers study found that 33  
540 members of NAI either left tracking cookies on users'  
541 computers or installed tracking cookies after the users opted  
542 out. The firm seemed to argue that they could continue to  
543 keep cookies on your machine as long as those cookies aren't  
544 being used to create specifically targeted ads.

545         I also understand that the Republican majority has  
546 stated that it is not sure whether legislation is needed or  
547 that it does not intend to move too quickly on this important  
548 issue. I think it is well past time to move ahead. There  
549 were six privacy hearings in the 111th Congress. At each of  
550 those six hearings, they made me more and more convinced that  
551 current law does not ensure proper privacy protections for

552 consumer information.

553           As I have stated in the past, I stand ready to work with  
554 my colleagues. This is not a partisan issue. It should not  
555 be a partisan issue. We have got to give the consumers the  
556 tools to protect their privacy without unduly burdening  
557 industry or stifling innovation. That should be our goal.  
558 This hearing can move us in that direction and I look forward  
559 to the testimony that we are going to receive.

560           Am I permitted to reserve the time or do I have to  
561 yield?

562           Mrs. {Bono Mack.} You are allowed to yield your time.

563           Mr. {Waxman.} I would like to yield to Mr. Markey.

564           [The prepared statement of Mr. Waxman follows:]

565 \*\*\*\*\* COMMITTEE INSERT \*\*\*\*\*

|  
566           Mr. {Markey.} I thank the gentleman very much. And it  
567 is good to see you in the chair, Madam Chair. Nancy Pelosi  
568 has acclimated the Democrats to a woman in the chair and it  
569 is good to see a Republican woman as well in such a position.

570           In May, I introduced bipartisan legislation with Joe  
571 Barton to strengthen privacy safeguards for children and  
572 teenagers. A bill--the Do Not Track Kids Act--would update  
573 the Children's Online Privacy Protection Act for the 21st  
574 Century to cover newer applications and services like geo-  
575 location technologies that didn't exist when we passed the  
576 Children's Privacy Act 13 years ago that I was the author of.  
577 That bill is the communications constitution when it comes to  
578 protecting kids online, but we need to amend it to take into  
579 account the explosive growth and innovation in the online  
580 ecosystem since 1998. 1998 was way back in the BF era, the  
581 before-Facebook era.

582           And in addition to updating that law, our bill also  
583 contains commonsense protections for teenagers. Our bill's  
584 digital marketing bill of rights stipulates that websites,  
585 online apps, operators, and operators of mobile apps directed  
586 to teens clearly explain why they need to collect the data.  
587 Our bill also prohibits operators from collecting geo-  
588 location information without permission from parents when we

589 are talking about children. And it finally includes an  
590 eraser button. That is an important privacy protection which  
591 requires operators of websites' online applications that  
592 contain or display personal information about children or  
593 minors to enable users to erase or otherwise eliminate  
594 publicly available personal information on a website about  
595 children.

596 I would hope that the least that we can accomplish this  
597 year is to provide a privacy bill of rights for children in  
598 our country. We can see now what the implications are if  
599 that information gets hacked, and my hope is that we can  
600 update the 1999 law to accomplish that goal.

601 I thank you, Madam Chair. I thank the gentleman from  
602 California.

603 [The prepared statement of Mr. Markey follows:]

604 \*\*\*\*\* COMMITTEE INSERT \*\*\*\*\*

|  
605 Mrs. {Bono Mack.} I thank the gentleman. And the chair  
606 now recognizes Mr. Barton for 5 minutes.

607 Mr. {Barton.} Thank you, Madam Chairwoman. I  
608 appreciate you and Chairman Walden holding this hearing. I  
609 want to associate myself with what Mr. Waxman and Mr. Markey  
610 just said. If you have Joe Barton and Ed Markey on a bill,  
611 you pretty well covered the political spectrum not only of  
612 this committee but of the Congress.

613 And I couldn't agree more with what former chairman  
614 Waxman and current Ranking Member Waxman said that privacy is  
615 not a partisan issue, and I do believe, as he said, that it  
616 is time to act. And hopefully, this hearing and several  
617 others that we have already had with the testimony we hope to  
618 hear from our administration officials will lead to action in  
619 this Congress.

620 I am cochairman of the bipartisan Privacy Caucus. I  
621 have been an advocate for privacy for almost 20 years in the  
622 Congress. In this year alone I have sent letters, most of  
623 them with Mr. Markey or Mr. Walden or Mr. Stearns or others  
624 to Facebook, AT&T, Sprint, the College Board, ACT, and even  
625 the Social Security Administration questioning activities  
626 that they have engaged in that appear to impinge on our  
627 citizens' privacy.

628           As Mr. Markey indicated, I have also introduced H.R.  
629 1895, the Do Not Track Kids Act of 2011. And this  
630 legislation does five important things. First of all, it  
631 updates the Children's Online Privacy Protection Act of 1998.  
632 It adds protections for our citizens between the ages of 13  
633 and 17. It would prohibit an internet company from sending  
634 targeting advertising to children and minors. It would also  
635 prohibit internet companies from collecting personal and  
636 location information from anyone who is less than 13 years of  
637 age without parental consent, and anyone less than 18 without  
638 individual consent. It would require website operators to  
639 develop something called an eraser button, which would give  
640 children and minors the ability to request deletion of their  
641 personal information that they do not wish to be available on  
642 the internet.

643           The time has come, Mr. Chairman and Madam Chairwoman.  
644 We know that we need a vigorous internet, we know that we  
645 need a vibrant economy, but we should all agree that we  
646 certainly need to protect our privacy in the internet age  
647 just as much as we did in the age before the internet.

648           With that, I would like to yield the balance of my time  
649 to Mr. Olson of Texas for such comments as he wishes to make.

650           [The prepared statement of Mr. Barton follows:]

651 \*\*\*\*\* COMMITTEE INSERT \*\*\*\*\*

|  
652           Mr. {Olson.} I thank my colleague from Texas. And I  
653 thank Chairman Upton, Walden, and Madam Chairman Bono Mack  
654 for you all's leadership in calling this important hearing.

655           As this is my first privacy-related hearing, I am  
656 approaching the issue with an open mind but not an empty  
657 mind. I think the key with approaching privacy is doubts,  
658 transparency, and facts. And that is why we are here today.

659           Consumers are becoming increasingly aware of their own  
660 privacy. It is important for them to know what information  
661 is being collected about them and how it is being used. In  
662 today's global economy, information is a valuable commodity,  
663 but we have to closely examine the many economic benefits the  
664 internet and the data collection provides consumers and our  
665 economy and balance those with legitimate privacy concerns.  
666 We cannot legislate in search of a problem.

667           So I look forward to examining this important issue  
668 further and to playing a proactive role in the future privacy  
669 discussions.

670           I thank my colleague from Texas for the time and yield  
671 back.

672           [The prepared statement of Mr. Olson follows:]

673 \*\*\*\*\* COMMITTEE INSERT \*\*\*\*\*

|  
674           Mrs. {Bono Mack.} I thank the gentleman and am happy to  
675 recognize the gentleman from Georgia, Mr. Barrow, for 1  
676 minute.

677           Mr. {Barrow.} Thank you, Madam Chair.

678           I am glad we are meeting today to discuss this issue.  
679 You know, this issue is a whole lot more important to a lot  
680 of people than most folks realize because most folks just  
681 don't realize how much they open themselves up when they go  
682 online, how much of their personal information is being  
683 stolen or misused every time they go online.

684           In the interest of time, I am going to cut to the chase.  
685 I understand industry's need for legitimate and even playing  
686 field across the country and customers' need on different  
687 sides of the same state boundary to a reasonable expectation  
688 of privacy every time they go online. I recognize the need  
689 for that. I come down heavily on the side of privacy,  
690 though, but I am interested in understanding how we can set  
691 forth rules of the road that are good for industry but  
692 protect the same shared expectation of privacy that folks  
693 have on different sides of the same state boundary. Folks  
694 have a right to expect a reasonable degree of privacy when  
695 they go online no matter where they live in this country. So  
696 I feel the need for us to do that.

697 I look forward to discussing how we can do this, and I  
698 believe today's hearing is a big step in that direction. I  
699 want to thank our witnesses for addressing these concerns  
700 today. And with that, I yield back.

701 [The prepared statement of Mr. Barrow follows:]

702 \*\*\*\*\* COMMITTEE INSERT \*\*\*\*\*

|  
703           Mrs. {Bono Mack.} I thank the gentleman. And the chair  
704 recognizes the gentlelady from California, Ms. Matsui, for 2  
705 minutes.

706           Ms. {Matsui.} Thank you, Madam Chair, and all the other  
707 chairs for holding today's hearing. I would like to thank  
708 our distinguished panelists for being with us this morning.  
709 It is nice to see you all on this important issue.

710           Today, millions of Americans rely on a variety of  
711 services and applications for a number of activities,  
712 including social networking and navigation and mapping  
713 services, among many others. As we all know, in today's  
714 economy, information is everything to everyone. We also know  
715 that technology changes continuously, every day. What is new  
716 today may not be new tomorrow. We must continue to encourage  
717 American innovation and foster growth and development of the  
718 next-generation technologies. But it is also essential that  
719 we properly protect the private and personal information of  
720 consumers, particularly our young people.

721           Privacy policies and disclosures should be clear and  
722 transparent. We should also understand the scope of  
723 information that is being collected, what it is being used  
724 for, the length of time it is being retained, and its  
725 security. Ultimately, meaningful privacy safeguards should

726 be in place while ensuring that we don't stifle innovation.

727 It is clearly a fine balance but we need to do it.

728 I thank you again for holding this important hearing

729 today, and I look forward to working with my colleagues on

730 this issue, and I yield back my time.

731 [The prepared statement of Ms. Matsui follows:]

732 \*\*\*\*\* COMMITTEE INSERT \*\*\*\*\*

|  
733 Mrs. {Bono Mack.} I thank the gentlelady. And the  
734 chair recognizes the gentlelady from Illinois, Ms.  
735 Schakowsky, for 1 minute.

736 Ms. {Schakowsky.} I wanted to thank you, Madam Chairman  
737 and Congressman Walden, for holding today's hearing. I  
738 especially want to say to you that I appreciate the work that  
739 we have done over several years on the issues of internet  
740 security and your leadership on this issue.

741 As a long-time consumer advocate, I have serious  
742 concerns about tracking practices, especially the undisclosed  
743 data gathering of user behavior. That is why I am an  
744 original sponsor of Congresswoman Speier's Do Not Track Me  
745 Online Act. This bill would establish standards for a  
746 consumer-friendly do-not-track mechanism. I am also a  
747 cosponsor of Congressman Markey's Do Not Track Kids Act,  
748 which would offer enhanced protections against the tracking  
749 of children and teens, and I urge the committee to consider  
750 these and other commonsense solutions to the tracking issue  
751 as soon as possible.

752 I associate myself also with my colleagues who want to  
753 investigate the--or want more answers anyway--on the hacking  
754 scandal of the Murdoch Enterprises and its implications. We  
755 must hold internet service providers and search engines

756 accountable for their actions and I look forward to hearing  
757 from our panel today.

758 Thank you and I yield back.

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

760 \*\*\*\*\* COMMITTEE INSERT \*\*\*\*\*

|  
761           Mrs. {Bono Mack.} I thank the gentlelady and thank my  
762 colleagues for their opening statements and now we turn our  
763 attention to our panel.

764           We have one panel of witnesses joining us today. Each  
765 of our witnesses has prepared an opening statement that will  
766 be placed into the record. Each of you will have 5 minutes  
767 to summarize the statement in your remarks.

768           On our panel we have the Honorable Julius Genachowski,  
769 Chairman of the Federal Communications Commission; we have  
770 the Honorable Edith Ramirez, Commissioner of the Federal  
771 Trade Commission; and our third witness is the Honorable  
772 Lawrence Strickling, Assistant Secretary for the National  
773 Telecommunications and Information Administration.

774           Good morning. We welcome you back to the hearing room.  
775 And again, you will be each recognized for 5 minutes, and I  
776 am sure you are very familiar with the timers on the table.  
777 As you know, when the light turns yellow, you will have 1  
778 minute left. So as I have been admonished, please remember  
779 to make sure your microphone is on and close to your mouth.

780           And at this point I am pleased to recognize Commissioner  
781 Ramirez for 5 minutes.

|  
782 ^STATEMENTS OF EDITH RAMIREZ, COMMISSIONER, FEDERAL TRADE  
783 COMMISSION; JULIUS GENACHOWSKI, CHAIRMAN, FEDERAL  
784 COMMUNICATIONS COMMISSION; AND LAWRENCE E. STRICKLING,  
785 ASSISTANT SECRETARY FOR COMMUNICATIONS AND INFORMATION, AND  
786 ADMINISTRATOR, NATIONAL TELECOMMUNICATION AND INFORMATION  
787 ADMINISTRATION

|  
788 ^STATEMENT OF EDITH RAMIREZ

789 } Ms. {Ramirez.} Thank you. Chairman Bono Mack, Chairman  
790 Walden, Ranking Members Butterfield and Eshoo, and members of  
791 the subcommittees, I am Edith Ramirez, the commissioner of  
792 the Federal Trade Commission. I appreciate the opportunity  
793 to present the Commission's testimony on internet privacy.

794 Today, personal information about consumers may be  
795 collected, sold, and used in almost every conceivable  
796 interaction a consumer has both online and offline. For  
797 instance, a college freshman sits in her dorm room using the  
798 internet to research depression for a paper she is writing  
799 for a psychology class. When her research is done, she  
800 applies online for student loans to help her pay for her  
801 tuition. Later, heading out of her dorm room, she grabs her  
802 Smartphone, which she uses to find the closest drugstore. At

803 the drugstore, she uses a loyalty card to get discounts.  
804 Afterwards, when the student is back online surfing the web  
805 and keeping up with friends on a social network, she sees  
806 advertisements for medication for depression and anxiety, as  
807 well as ads for high-interest credit cards and payday loans.

808         These activities--made possible by technology  
809 unimaginable years ago--offer clear benefits to the student.  
810 She enjoyed easy access to information, received discounts at  
811 the drugstore, and connected with friends, all in the course  
812 of a few hours. But the student is likely unaware that that  
813 about her drugstore purchases, web activities, and location  
814 may have been sold to data brokers she has never heard of and  
815 added to a growing digital profile about her. She may not  
816 know that this information may be used for marketing purposes  
817 or to make decisions about her eligibility for credit. And  
818 she might be especially surprised to learn that her research  
819 into depression may be included in her digital profile and  
820 could be used when she applies for life insurance or might be  
821 sold to prospective employers when she graduates a few years  
822 later.

823         This student is not alone in her lack of awareness that  
824 vast quantities of information about her are mined and sold  
825 every day. Most consumers have no idea that so much  
826 information about them can be accumulated and shared among so

827 many companies, including employers, retailers, advertisers,  
828 data brokers, lenders, and insurance companies.

829         The FTC wants consumers to have an effective notice and  
830 meaningful choices about what data is collected about them  
831 and how it is used. That in turn will engender the consumer  
832 confidence and trust that are essential for industry to  
833 continue to innovate and flourish.

834         For decades, the FTC has been the Nation's lead law  
835 enforcer on consumer privacy and data security. During this  
836 time, we have also engaged in substantial policy initiatives  
837 and educated consumers and businesses on privacy and data  
838 security. In recent months, we have brought a number of  
839 significant enforcement actions in this area, as described in  
840 our written testimony. Just 2 weeks ago, we announced an  
841 action against Teletrack, a company that sold lists  
842 identifying cash-strapped consumers to marketers in violation  
843 of the Fair Credit Reporting Act. To resolve our  
844 allegations, the company has agreed to pay a 1.8 million  
845 civil penalty and to submit to a court order that ensures  
846 that consumers' sensitive credit report information is not  
847 sold for marketing purposes.

848         Privacy and data security also continue to be at the  
849 forefront of the FCC's policy agenda. In December,  
850 Commission staff issued a preliminary privacy report that

851 recommended three bedrock principles. The first is privacy  
852 by design, the idea that companies should embed privacy  
853 protections into their products and services from the start.  
854 Second, companies should present choices about the privacy of  
855 personal data in a simple way and at the time they are making  
856 decisions about that data. Third, companies should improve  
857 the transparency of their privacy practices thereby promoting  
858 competition on privacy.

859         Finally, a staff report called for the adoption of Do  
860 Not Track, a one-stop tool for consumers to control online  
861 behavioral tracking. The Commission has not taken a position  
862 on whether Do Not Track legislation is needed, but a majority  
863 of commissioners, myself included, supports widespread  
864 implementation of Do Not Track.

865         In closing, I want to note that the Commission  
866 appreciates the committee's focus on consumer privacy and  
867 data security and we are prepared to provide any assistance  
868 that you may need on these critical issues. Thank you.

869         [The prepared statement of Ms. Ramirez follows:]

870         \*\*\*\*\* INSERT 1 \*\*\*\*\*

|

871           Mrs. {Bono Mack.} Thank you, Commissioner.

872           And the chair is now pleased to recognize Chairman

873 Genachowski for his 5 minutes.

|  
874 ^STATEMENT OF JULIUS GENACHOWSKI

875 } Mr. {Genachowski.} Thank you to the chairs and ranking  
876 members for holding this important joint hearing.

877 The right to privacy is a fundamental American value,  
878 and the Federal Communications Commission has worked to  
879 implement congressional laws that protect the privacy of  
880 consumers when they use communications networks. The  
881 internet and other new forms of communications raise new and  
882 difficult privacy challenges, particularly when it comes to  
883 children. The FCC is committed to working with Congress, the  
884 Federal Trade Commission, the Department of Commerce, and our  
885 colleagues across government as well as industry and all  
886 external stakeholders to tackle these issues.

887 To understand the importance of privacy challenges in  
888 the digital age, one must appreciate the extraordinary  
889 opportunities created by broadband Internet services. High-  
890 speed internet, fixed and mobile, is an indispensable  
891 platform for innovation and economic growth, for our global  
892 competitiveness and opportunities to transform education,  
893 healthcare, energy, and public safety. To fully realize the  
894 benefits of broadband, people need to trust that the internet  
895 and all communications networks are safe and secure.

896           As our National Broadband Plan found, privacy concerns  
897 are a barrier to broadband adoption. When people and small  
898 businesses fear that new technology puts their privacy at  
899 risk, they are less likely to use those new technologies.  
900 Consider location-based services. McKinsey estimates that  
901 this growing sector will deliver \$700 billion in value to  
902 consumers and businesses over the next decade.

903           Two weeks ago, the FCC, with the participation of the  
904 FTC, hosted a workshop on location-based services, which  
905 identified consumer concerns about the use and security of  
906 their location information as something that must be  
907 addressed to seize the economic and other benefits of this  
908 new technology.

909           In general in this area, we need to strike a smart  
910 balance, ensuring that private information is fully  
911 protected, and at the same time ensuring a climate that  
912 encourages new investment and new innovation that will create  
913 jobs and improve our quality of life.

914           At the FCC, our approach to privacy centers on three  
915 overarching goals: consumer control and choice, meaningful  
916 transparency about privacy practices, and data security. The  
917 Communications Act charges the FCC with implementing a number  
918 of privacy protection provisions. Sections 222, 338, and 631  
919 give the FCC authority to protect the privacy and security of

920 the network-related data of telephone, cable, and satellite  
921 subscribers. The FCC is also working to educate consumers  
922 and small businesses about privacy and data security. For  
923 example, we recently released a cyber security tip sheet to  
924 help small businesses understand and implement basic  
925 precautions to secure their networks and data with which we  
926 have partnered with both the Chamber of Commerce, the  
927 National Urban League, and others to distribute.

928         To make sure consumers are getting consistent and clear  
929 information and guidance from government agencies, we have  
930 partnered with the Federal Trade Commission, the Commerce  
931 Department, and the Small Business Administration on a number  
932 of education efforts like Net Cetera and OnGuard Online,  
933 which offer advice on how to protect children's personal  
934 information and guard against identity theft. These  
935 education efforts are part of an established track record of  
936 effective coordination between the FCC, the FTC, and other  
937 agencies.

938         Now, technology can and must be part of the solution. I  
939 continue to encourage industry to take this very seriously,  
940 to use its expertise to empower consumers, provide  
941 transparency, and protect data. And as the government's  
942 expert agency on broadband and communications networks with a  
943 long history of taking commonsense steps to protect consumer

944 privacy, the FCC has an important role to play going forward.  
945 Our network-focused privacy and data security rules are  
946 settled and legally tested. Some updating of the  
947 Communications Act network-oriented privacy regime is  
948 appropriate for the digital age. This can be done  
949 harmoniously with other agencies' implementation of any  
950 generally applicable consumer privacy or data security  
951 legislation.

952         We look forward to working with Congress, with my  
953 colleagues here at the table and elsewhere, and with all  
954 stakeholders outside of government to harness technology to  
955 promote innovation, job creation, and economic growth, while  
956 protecting fundamentally important principles of privacy.

957         Thank you again for the opportunity to testify and I  
958 look forward to your questions.

959         [The prepared statement of Mr. Genachowski follows:]

960 \*\*\*\*\* INSERT 2 \*\*\*\*\*

|  
961 Mrs. {Bono Mack.} Thank you.

962 Secretary Strickling, you are recognized for 5 minutes.

|  
963 ^STATEMENT OF LAWRENCE E. STRICKLING

964 } Mr. {Strickling.} Chairwoman Bono Mack, Chairman  
965 Walden, Ranking Members Butterfield and Eshoo, thank you very  
966 much for holding today's hearing and inviting the  
967 participation of NTIA. I am also glad to be here with my  
968 colleagues Chairman Genachowski and Commissioner Ramirez.  
969 All of share a strong commitment to protecting consumers and  
970 promoting economic growth.

971 For the past 2 years, NTIA has been hard at work as part  
972 of the Commerce Secretary Locke's Internet Policy Taskforce  
973 to conduct a broad assessment of how well our current  
974 consumer data privacy framework is serving consumers,  
975 businesses, and other participants in the internet economy.  
976 To guide our work, we have focused on two key principles: the  
977 first--and you have heard them from the other witnesses this  
978 morning--is the idea of trust. It is imperative for the  
979 sustainability and continued growth and innovation of the  
980 internet that we preserve the trust of all actors on the  
981 internet, and nowhere is this clearer than in the context of  
982 consumer privacy.

983 Our second key principle is that we want to encourage  
984 multi-stakeholder processes to address these key policy

985 issues. We want all stakeholders to come together to deal  
986 with these issues in ways that allow for flexibility, speed,  
987 and efficiency. We want to avoid the delay, rigidity, and  
988 lack of quick response often associated with more traditional  
989 regulatory processes.

990 Last December, the department issued a ``green paper''  
991 on consumer data privacy, which offered a set of 10 policy  
992 recommendations and asked for public input on a series of  
993 additional questions. In this document, we proposed a three-  
994 part framework for consumer data privacy. First, we called  
995 for the establishment of baseline consumer data privacy  
996 protections that are flexible, comprehensive, and enforceable  
997 by the Federal Trade Commission. We refer to this baseline  
998 as a consumer privacy bill of rights. This set of basic  
999 principles would provide clear privacy protections for  
1000 personal data in which federal privacy laws that exist today  
1001 do not apply or offer inadequate protection.

1002 Second, to flesh out the principles into more specific  
1003 rules of behavior, we recommended that we rely on  
1004 stakeholders in the industry working with civil society and  
1005 others to develop enforceable codes of conduct through a  
1006 multi-stakeholder process. In our proposal, these codes  
1007 would implement the basic consumer protections, but their  
1008 adoption would be voluntary.

1009           And third, we recommended strengthening the FTC's  
1010 consumer data privacy enforcement authority. I believe our  
1011 approach should welcome and attract bipartisan support. It  
1012 is neither traditional top-down regulation, nor is it self-  
1013 regulation. I think to use the word that Vice Chair Terry  
1014 used in his opening remarks, it provides a real balance  
1015 between consumer protection and meeting the needs of industry  
1016 to continue to grow and innovate.

1017           In March of this year, after engaging further with a  
1018 wide array of stakeholders, the administration announced its  
1019 support for legislation that would help better protect  
1020 consumer data privacy in the digital age by establishing the  
1021 baseline protections consumers need in legislation. And a  
1022 broad array of stakeholders--including many businesses--have  
1023 expressed support for this approach. Specifically, this  
1024 legislation would provide consumers with more consistent  
1025 privacy protections, thereby strengthening trust, and  
1026 preserving the internet as an engine of economic growth and  
1027 innovation. Legislation would also provide businesses with a  
1028 common set of ground rules and would put the United States in  
1029 a stronger position to work toward reducing international  
1030 barriers to trade in the free flow of information.

1031           Our recommendations for this baseline are based on a  
1032 comprehensive set of fair information practice principles.

1033 In our ``green paper,' ' we drew from existing statements of  
1034 FIPS as the starting point for principles that should apply  
1035 in this new commercial context. And as we develop a more  
1036 definitive administration position, we are now examining how  
1037 these principles would apply to the interactive and  
1038 interconnected world of today.

1039 The department is also continuing to work with others in  
1040 the Federal Government to develop the administration policy  
1041 on data security. Without sufficient data security, there  
1042 cannot be effective data privacy. And in May, the  
1043 administration submitted a legislative proposal to improve  
1044 cyber security, which includes proposals to strengthen  
1045 consumer protections in the case of data breaches. The  
1046 administration proposal would help businesses by simplifying  
1047 and standardizing the existing patchwork of state laws with a  
1048 single clear nationwide requirement and would help ensure  
1049 that consumers receive notification when appropriate  
1050 standards are met.

1051 I want to thank you again for holding today's hearing  
1052 and for the two subcommittees' commitment to addressing  
1053 consumer data privacy issues. Working together, we can  
1054 protect consumers in the digital age, as well as help  
1055 businesses expand globally by reducing barriers to trade in  
1056 international commerce.

1057 Thank you, and I look forward to your questions.

1058 [The prepared statement of Mr. Strickling follows:]

1059 \*\*\*\*\* INSERT 3 \*\*\*\*\*

|  
1060 Mrs. {Bono Mack.} Thank you, Mr. Secretary. And thank  
1061 you all for your unique insights. And I will recognize  
1062 myself now for 5 minutes for questions.

1063 And Chairman Genachowski, we have all seen the headlines  
1064 about the phone hacking scandal in Britain. Are you  
1065 satisfied that sufficient safeguards are in place to prevent  
1066 similar privacy breaches here in the U.S., or should  
1067 Americans be concerned?

1068 And also, as mobile devices become integrated in our  
1069 daily lives and consumers use them more and more for critical  
1070 functions like banking, are we going to see an explosion of  
1071 hacking incidents?

1072 Mr. {Genachowski.} There are several laws in place that  
1073 address hacking issues. There are federal wiretapping laws  
1074 that prevent unauthorized hacking. Hacking, I guess, by  
1075 definition is unauthorized. There are provisions of the  
1076 Communications Act that criminalize interception of  
1077 information. There are state laws that prevent it. Any  
1078 hacking of phones should be investigated. There are criminal  
1079 provisions and they should be addressed very seriously.

1080 There are also issues around the security of devices  
1081 themselves. Several years ago, there was an effort to  
1082 improve the security of phones, including voicemails, for

1083 example, by providing for password protection on voicemails.  
1084 The state of play now is that many carriers automatically  
1085 provide password protection for voicemails. Others give  
1086 consumers the choice. There is no question that greater  
1087 protection can be accomplished by using the password  
1088 protections, and that is an area that should be looked at.

1089 Mrs. {Bono Mack.} Thank you.

1090 Commissioner Ramirez, the question of why a privacy  
1091 regulation is needed is a policy question you must decide.  
1092 If a regulation is needed, presumably there is harm or  
1093 consumer injury and the regulation is seeking to prevent.  
1094 Setting aside data security related to personally  
1095 identifiable information, or PII, where we know the potential  
1096 harm of identity theft and other unlawful conduct, what is  
1097 the harm or consumer injury when we are discussing internet  
1098 privacy? Are you aware of specific cases or examples?

1099 Ms. {Ramirez.} What I would say is that the fundamental  
1100 issue that the FTC is trying to address is the issue that  
1101 increasingly, information is being used in unexpected ways.  
1102 Consumers simply do not know how the information that is  
1103 being collected about them is--number one, what information  
1104 is being collected, and number two, how that data is being  
1105 used. So the framework that the staff has proposed in its  
1106 initial report seeks to balance basic privacy protections for

1107 consumers against the needs of the business community. But  
1108 the fundamental aim is to provide increased information to  
1109 consumers and choice and control over the information that is  
1110 being collected about them and how it is being used.

1111 Mrs. {Bono Mack.} So we have heard from many  
1112 stakeholders that we really don't know enough about what the  
1113 average consumer thinks about privacy nor the use of his or  
1114 her information in exchange for free content. We do know  
1115 that opt-out rates are low even in those cases where people  
1116 click through the pages that describe what information is  
1117 gathered and shared. That is not necessarily conclusive  
1118 evidence that consumers don't care about their information,  
1119 but it must mean something. What is the Commission doing to  
1120 find out how consumers really feel about privacy and the use  
1121 of their PII?

1122 Ms. {Ramirez.} Well, we do know from public reports  
1123 that there is survey after survey that shows that consumers  
1124 are increasingly concerned about how their information is  
1125 being used. They are increasingly concerned about privacy.  
1126 We also know from public reports that there has been outcry  
1127 by the part of the public when certain companies have not  
1128 provided basic privacy protections for them.

1129 Furthermore, industry itself has recognized that there  
1130 is a need for increased and greater consumer trust. The

1131 Digital Advertising Alliance has conducted a study and they  
1132 themselves recognize that there is a greater need to have  
1133 consumers have greater trust in the marketplace in order for  
1134 the marketplace to continue to flourish and for innovation to  
1135 be promoted.

1136 Mrs. {Bono Mack.} The Federal Government hasn't done a  
1137 study in, what, 10 years? Do you or any of the other  
1138 agencies have plans to conduct another study soon to gather  
1139 hard data?

1140 Ms. {Ramirez.} What we have done is that as the process  
1141 laying the groundwork for their report that was issued by  
1142 staff in December of last year, the Agency conducted a series  
1143 of public roundtables soliciting input from all relevant  
1144 stakeholders that included industry, consumers, academics,  
1145 technologists. We have also solicited written comments and  
1146 received approximately 450 written comments that are  
1147 currently being analyzed by staff, and the Agency does intend  
1148 to issue a final report later this year.

1149 Mrs. {Bono Mack.} I thank the commissioner.

1150 And the chair now recognizes Mr. Waxman for 5 minutes.

1151 Mr. {Waxman.} Thank you very much for recognizing me.

1152 The committee will soon be marking up a data security  
1153 bill. That markup may involve defining what data must be  
1154 secured. One approach might include requiring all data to

1155 have some minimum level of security if stored in the cloud or  
1156 as it travels over a dump pipe. Under Section 222 of the  
1157 Communications Act, customer proprietary network information,  
1158 CPNI, must be protected. CPNI includes the time, date,  
1159 duration, and destination number of each call, the type of  
1160 network a consumer subscribes to, and any other information  
1161 that appears on the consumer's telephone bill. Under the  
1162 Cable Act, cable operators are supposed to secure personally  
1163 identifiable information. Now, that term is not defined.

1164 Under the chair's draft proposal, the term ``personal  
1165 information'' means an individual's name or address or phone  
1166 number in combination with an identifying number such as a  
1167 Social Security number or driver's license number or  
1168 financial account number, but only if there is the required  
1169 security code or password. I agree with Commissioner Ramirez  
1170 that this is a very narrow definition.

1171 Mr. Strickling, we know what the administration thinks  
1172 should be covered thanks to its draft proposal, so I won't  
1173 need to ask you to answer this one, but I am going to run  
1174 through a long list and I would like to hear from Chairman  
1175 Genachowski and Commissioner Ramirez to tell me, answering  
1176 yes or no, should the following types of data be required to  
1177 be secured?

1178 Whichever one of you--IP address? Mr. Genachowski?

1179 Mr. {Genachowski.} Yes. And I think the CPNI rules  
1180 that we have implemented at the FCC are a very good starting  
1181 point, but yes.

1182 Mr. {Waxman.} Ms. Ramirez?

1183 Ms. {Ramirez.} Yes.

1184 Mr. {Waxman.} Okay. How about any unique persistent  
1185 identifier such as a customer number, a unique pseudonym or  
1186 user alias such as a Facebook user name and/or password. Ms.  
1187 Ramirez?

1188 Ms. {Ramirez.} Yes, it if could be linked to a specific  
1189 individual or computer or device. Yes.

1190 Mr. {Genachowski.} I would agree.

1191 Mr. {Waxman.} How about medical history information,  
1192 physical or mental condition, and information regarding the  
1193 provision of healthcare to the individual?

1194 Ms. {Ramirez.} Yes.

1195 Mr. {Genachowski.} Yes, I would agree. And these are  
1196 commonsense things that people would expect should be kept  
1197 secured.

1198 Mr. {Waxman.} Well, they are not in the bill now, so I  
1199 am trying to get the record to indicate that you think they  
1200 ought to be protected.

1201 Race or ethnicity?

1202 Ms. {Ramirez.} Yes.

1203 Mr. {Genachowski.} I would assume so.

1204 Mr. {Waxman.} Religious beliefs and affiliation, sexual  
1205 orientation or sexual behavior, do you agree those ought to  
1206 be covered?

1207 Ms. {Ramirez.} I do.

1208 Mr. {Genachowski.} Yes.

1209 Mr. {Waxman.} Mother's maiden name?

1210 Ms. {Ramirez.} Yes.

1211 Mr. {Genachowski.} I would assume so. I haven't  
1212 thought about that.

1213 Mr. {Waxman.} Well, a lot of websites ask for your  
1214 mother's maiden name.

1215 Income, assets, liabilities, or financial records and  
1216 other financial information associated with a financial  
1217 account, including balances and other financial information?

1218 Ms. {Ramirez.} Yes.

1219 Mr. {Genachowski.} I agree.

1220 Mr. {Waxman.} Precise geo-location information and any  
1221 information about the individual's activities and  
1222 relationships associated with such geo-location?

1223 Ms. {Ramirez.} Yes.

1224 Mr. {Genachowski.} Agree.

1225 Mr. {Waxman.} Unique biometric data including a  
1226 fingerprint or retina scan?

1227 Ms. {Ramirez.} Yes.

1228 Mr. {Genachowski.} Agree.

1229 Mr. {Waxman.} Commissioner Ramirez, when you were here  
1230 a few week ago to testify about the Republican's draft Data  
1231 Security Bill, you mentioned that the Federal Trade  
1232 Commission is concerned about the limited scope of personal  
1233 information that would be subject to the bill's data security  
1234 and breach notification requirements. In particular, you  
1235 discussed health information collected from companies not  
1236 covered by the HIPAA law. I agree that the FTC should be  
1237 concerned about this, but I have another concern. It is not  
1238 clear to me what would happen when the company that is  
1239 breached can argue that it does not know what type of  
1240 information was breached.

1241 Recently, we heard of an extensive breach at Dropbox.  
1242 Dropbox is a popular cloud computing service that allows its  
1243 25 million users to store documents and other files on its  
1244 servers. These users may store innocuous documents like a  
1245 grocery list or pictures of nature or they may store  
1246 sensitive information such as an application for a loan or  
1247 compromising or embarrassing photos. Dropbox could argue  
1248 that it is in a cloud provider of storage that doesn't know  
1249 what its users put there and that those users expect it not  
1250 to go snooping through their files to find out. Shouldn't

1251 Dropbox and companies like it be required to have a certain  
1252 level of data security? And similarly, shouldn't Dropbox and  
1253 companies like it be required to notify its customers of a  
1254 breach even if it does not know what data it holds?

1255 Ms. {Ramirez.} I am not in a position to comment on  
1256 specific practices, but what I will say is that companies  
1257 should provide reasonable security for personal information  
1258 and private information of consumers. So depending on the  
1259 nature of the specific facts and depending on the information  
1260 that is being stored and the size of the company, a number of  
1261 other factors, reasonable security measures ought to be  
1262 provided, yes.

1263 Mr. {Waxman.} Thank you very much.

1264 Thank you, Madam Chair.

1265 Mrs. {Bono Mack.} I thank the gentleman. And the chair  
1266 is pleased to recognize Chairman Walden for 5 minutes.

1267 Mr. {Walden.} I thank the chairwoman for that.

1268 And I wonder if I might enter into a colloquy with the  
1269 former chairman. Could you just tell us what bill you were  
1270 referencing? We were trying to figure that out over here.

1271 Mr. {Waxman.} It is a draft that has not been  
1272 introduced with a number but we have a markup in the Consumer  
1273 Affairs Committee next Wednesday as I understand it.

1274 Mr. {Walden.} Okay. I am not on that committee, so we

1275 were just curious what it was.

1276 Mr. {Waxman.} Yeah. This is a joint hearing of the two  
1277 subcommittees.

1278 Mr. {Walden.} Right. Understood.

1279 Mr. Strickling, I am kind of interested in some of the  
1280 things that your colleagues there were able to comment on.  
1281 Does the administration's position through your NTIA  
1282 legislation, do you share those same positions as were  
1283 articulated by the FCC and FTC?

1284 Mr. {Strickling.} The administration put forward in May  
1285 a proposal for data breach legislation that covered many--I  
1286 can't say all--of the items that Congressman Waxman listed  
1287 out for these folks.

1288 Mr. {Walden.} Right.

1289 Mr. {Strickling.} But many of them, such as the unique  
1290 biometric data, unique account identifiers, those are all  
1291 within the category of--

1292 Mr. {Walden.} Right.

1293 Mr. {Strickling.} --sensitive personal information.

1294 Mr. {Walden.} Were there any that were articulated here  
1295 that you would disagree with?

1296 Mr. {Strickling.} There might be some I would reserve  
1297 judgment on but none I would disagree with listening to the  
1298 list today.

1299 Mr. {Walden.} Okay. Thank you.

1300 Chairman Genachowski and Commissioner Ramirez, I am  
1301 concerned about the uneven competitive playing field given  
1302 the convergence of communications out there in the  
1303 marketplace. Do you think it is fair or competitively  
1304 neutral to apply privacy protections to carriers but not, for  
1305 example, operating system providers like Apple who have  
1306 access to exactly the same consumer information?

1307 Mr. {Genachowski.} The level playing field is a  
1308 completely reasonable goal. How to achieve it is obviously a  
1309 harder question and to the extent that different sectors come  
1310 from different backgrounds, have different competitive  
1311 frameworks, the exact regulatory scheme might be different,  
1312 but at the end of the day, I agree on your principles on  
1313 technological and competitive neutrality.

1314 Mr. {Walden.} Commissioner?

1315 Ms. {Ramirez.} I also agree that there should be a  
1316 level playing field. From the FTC's perspective, it is  
1317 important that consumers be provided with basic privacy  
1318 protections irrespective of the entity that is providing the  
1319 service. So the Agency does take the view that if there is  
1320 legislation, the Agency ought to have jurisdiction over  
1321 telecom common carriers.

1322 Mr. {Walden.} Chairman Genachowski?

1323 Mr. {Genachowski.} Well, there is a longstanding issue  
1324 here. We disagree with our friends at the Federal Trade  
1325 Commission on this point.

1326 Mr. {Walden.} I wondered.

1327 Mr. {Genachowski.} The FCC brings years of experience  
1328 and expertise operating under congressional statutes with  
1329 respect to networks wired and wireless--

1330 Mr. {Walden.} Right.

1331 Mr. {Genachowski.} --and privacy issues around them.  
1332 That system has worked well. And any revisions to the  
1333 statutory framework in my strong opinion should continue to  
1334 recognize and take advantage of this long history of  
1335 expertise. Now, our two agencies have worked very well  
1336 together--

1337 Mr. {Walden.} Right.

1338 Mr. {Genachowski.} --cooperatively and collaboratively.

1339 Mr. {Walden.} I guess I think it is important there is  
1340 some cop on the beat if you will allow me to use that, so I  
1341 am kind of curious about the Commission's actions to enforce  
1342 its CPNI rules and other consumer privacy protections. Can  
1343 you just elaborate on that process for us?

1344 Mr. {Genachowski.} Yeah. First of all, there is an  
1345 ongoing education process making sure that companies are  
1346 certifying us as to their compliance and on a regular basis,

1347 our enforcement bureau issues notices of liabilities when  
1348 companies are not doing that. Over the years, issues have  
1349 emerged that the Commission is taking an action on. Some  
1350 people may remember the pretexting discussion of a number of  
1351 years ago where it was found that people were posing in order  
1352 to gain access to records. The Commission at that point  
1353 adopted some commonsense rules to make it clear--

1354 Mr. {Walden.} Right.

1355 Mr. {Genachowski.} --that that couldn't happen and to  
1356 put in place opt-in requirements for third-party efforts to  
1357 access data.

1358 Mr. {Walden.} Ms. Ramirez?

1359 Ms. {Ramirez.} If I may add, I did want to clarify that  
1360 I was by no means suggesting that the FCC's role should be  
1361 displaced here. All I was saying was that we do believe that  
1362 the FTC has significant enforcement experience that ought to  
1363 be brought to bear here.

1364 Mr. {Walden.} Got it.

1365 Mr. Strickling, do you want to comment on any of that?

1366 Mr. {Strickling.} I was hoping to stay out of that  
1367 actually, Mr. Chairman.

1368 Mr. {Walden.} I figured as much. That is why I thought  
1369 I would ask you to wade on in there.

1370 Mr. {Strickling.} I think what I will say is that the

1371 framework we are proposing, which would apply to all of  
1372 industry does not intend by the proposal we are making to  
1373 displace sector-specific regulation if there is a need for  
1374 that. And I think we could all agree that there are certain  
1375 industries such as the financial services and healthcare  
1376 industry where I think additional protections are absolutely  
1377 justified.

1378         Mr. {Walden.} Indeed. Well, we appreciate your  
1379 testimony today and working with you as we go forward to deal  
1380 with this issue that we are all affected by and want to do  
1381 the right thing on.

1382         Thank you, Madam Chair.

1383         Mrs. {Bono Mack.} Thank you, Chairman Walden. And  
1384 recognize now the gentlelady from California, Ms. Eshoo, for  
1385 5 minutes.

1386         Ms. {Eshoo.} Thank you again, Madam Chairwoman.

1387         Thank you to each of you for your testimony and for the  
1388 work that you have done on this.

1389         I mentioned in my opening statement that we need a  
1390 unified approach. And while I really respect and appreciate  
1391 the work that you have been doing, each Agency is taking on  
1392 what they are taking on. It is the same subject matter but  
1393 it is very difficult for me to see how this is all stitched  
1394 together so that there is a comprehensive policy for the

1395 country. I think we draw from the work that you are doing  
1396 but I think that the Congress really either needs to update  
1397 some of the laws that are on the books or do something that  
1398 is overarching that is going to protect innovation but also  
1399 speak to, what, the second decade of the 21st Century that we  
1400 are already in. That is what my sense of what I have heard.

1401 To Chairman Genachowski, under current law, does the FCC  
1402 have authority over ISPs to ensure that the proprietary  
1403 network information of internet customers is not being sold  
1404 to third parties or used for the ISPs on marketing efforts?

1405 Mr. {Genachowski.} Well, that is an area where  
1406 clarification of the Communications Act would be helpful.  
1407 There is uncertainty and unpredictability about that now.  
1408 And in thinking about a level playing field, looking at  
1409 Telco's cable satellite where there is clear jurisdiction of  
1410 VoIP, telephony, voice-over-internet telephone service where  
1411 the FCC has acted as well. This is an area where  
1412 clarification would be very helpful. And in the absence of  
1413 it, there is a gap.

1414 Ms. {Eshoo.} You do need legislative clarification?

1415 Mr. {Genachowski.} Yes.

1416 Ms. {Eshoo.} I hope all the members heard that because  
1417 there--

1418 Mr. {Genachowski.} Legislative clarification would be

1419 beneficial--

1420 Ms. {Eshoo.} Okay.

1421 Mr. {Genachowski.} --and would eliminate uncertainty  
1422 and unpredictability.

1423 Ms. {Eshoo.} Each word counts. Each word counts.

1424 Help me with this and whomever wants to lean in on this.  
1425 We are all concerned about children. And I think if there  
1426 were to be a starting place, you know, I think that we could  
1427 develop consensus around that because I think consensus  
1428 already exists on it. Children, no matter what, are always  
1429 the most vulnerable, no matter what the category is that we  
1430 speak of. I think just about across the board that applies.

1431 Now, if we are talking about children versus those that  
1432 are a little older but they are still teenagers, who is going  
1433 to tell the truth about their age when they are online? You  
1434 know, I mean if it is an 11-year-old who is probably more  
1435 adept at, you know, traveling all of these lanes than someone  
1436 that is 32 years old, but there is a restriction because of  
1437 their age, why would they tell the truth? So it seems to me  
1438 that, you know, this is something we need to figure out. I  
1439 don't know how we protect children if, in fact, we start out  
1440 with that as an approach to this issue of privacy and all  
1441 that is attached to it. Have any of the agencies given  
1442 thought to this? And if so, what is it?

1443 Ms. {Ramirez.} I will take the lead if I may.

1444 Ms. {Eshoo.} Sure. That is great.

1445 Ms. {Ramirez.} The FTC has certainly thought about  
1446 these issues and you certainly raised some very important  
1447 practical concerns. The Agency is currently undergoing a  
1448 review of the rules--

1449 Ms. {Eshoo.} Um-hum.

1450 Ms. {Ramirez.} --and staff is analyzing comments on  
1451 the--

1452 Ms. {Eshoo.} When are you going to finish that?

1453 Ms. {Ramirez.} We are moving forward with that and  
1454 expect to be coming out with recommendations shortly.

1455 Ms. {Eshoo.} But does it cover this issue?

1456 Ms. {Ramirez.} Well, I can't comment on the specific  
1457 recommendations that were ultimately made, but I will tell  
1458 you that--

1459 Ms. {Eshoo.} No, I am not asking you what your  
1460 recommendation is going to be. I am asking you if you are  
1461 examining this specific issue and when you are going to be  
1462 finished.

1463 Ms. {Ramirez.} We are examining the practical  
1464 difficulties that do apply when applying that statute, yes.  
1465 And in particular, the issue has frankly become of greater  
1466 concern when one speaks about teenagers who may raise even

1467 more significant concerns along those lines. And that is an  
1468 issue that we are also seeking comment on and will be  
1469 addressing in our final--

1470 Ms. {Eshoo.} My time is running out.

1471 Mr. Chairman?

1472 Mr. {Genachowski.} I agree that a focus on children as  
1473 a starting point is something that should be strongly looked  
1474 at. Part of the reason is it is an area where there is the  
1475 widest consensus--

1476 Ms. {Eshoo.} Um-hum.

1477 Mr. {Genachowski.} --that as a parent that we want to  
1478 make sure that we know how to basically protect our children  
1479 and that the internet is a safe place for them as well as a  
1480 place that they can learn--

1481 Ms. {Eshoo.} Are you looking at this?

1482 Mr. {Genachowski.} We are looking at it with respect to  
1483 communications networks, and we have been working with  
1484 innovators in the area--

1485 Ms. {Eshoo.} Um-hum.

1486 Mr. {Genachowski.} --encouraging them to develop tools.  
1487 And I was in your district a couple of months ago and at the  
1488 Computer History Museum we organize a showcase of tools and  
1489 technologies that were being developed to help parents  
1490 exactly with these issues online--

1491 Ms. {Eshoo.} Well, a lot of companies are becoming that  
1492 much more sensitive about--well, I think my time has run out  
1493 but I think that this hearing is most helpful to move this  
1494 issue along. Thank you.

1495 Mrs. {Bono Mack.} I thank the gentlelady and know  
1496 recognize the vice chair of the subcommittee, Ms. Blackburn,  
1497 for 5 minutes.

1498 Mrs. {Blackburn.} Thank you, Madam Chairman. Thank you  
1499 all for your patience.

1500 Ms. Ramirez, I want to go back. In your testimony you  
1501 stated that you thought the harm was lack of choice or lack  
1502 of knowledge of how their information is being used and your  
1503 comments about the public. So what I am wanting to know from  
1504 you is do you think that is justification for implementing Do  
1505 Not Track? Are you going to come forward and identify some  
1506 real harms so that you are articulating what the bad  
1507 practices or the bad actions are that would require Do Not  
1508 Track addressing, and are you planning to do any market  
1509 analysis and market impact of any steps that you come forward  
1510 with?

1511 Ms. {Ramirez.} Let me first emphasize that the  
1512 Commission is not advocating legislation in the privacy arena  
1513 at this time. What we have done is to put out a broad  
1514 framework of best practices that we recommend industry and

1515 also a framework that policymakers can consider should  
1516 Congress decide to pursue legislation in this arena.

1517         As to your specific question regarding Do Not Track,  
1518 that is just simply one element and one aspect of the  
1519 recommendations that relates solely to behavior advertising--

1520         Mrs. {Blackburn.} So you are not wedded to that as a  
1521 template?

1522         Ms. {Ramirez.} So what we have stated--and the majority  
1523 of us on the Commission do advocate--a universal Do Not Track  
1524 mechanism. We have identified several elements that we think  
1525 are important to--

1526         Mrs. {Blackburn.} Okay. Are you separating the online  
1527 advertising from some of the aggressive social media  
1528 networking as you do that analysis? Are you separating those  
1529 two transactions?

1530         Ms. {Ramirez.} Again, online advertising, the majority  
1531 of us do believe that there should be a Do Not Track  
1532 mechanism that gives consumers greater choice about what  
1533 information about them is collected and how that information  
1534 is--

1535         Mrs. {Blackburn.} Okay. Let me move on with you then.  
1536 The Supreme Court case, Sorrell v. IMS Health Incorporated,  
1537 the Court struck down Vermont's Prescription Confidentiality  
1538 Act. And Vermont's law restricted the ability of the

1539 pharmacist and drug manufacturers from using previous  
1540 prescription data for marketing. Legal experts have claimed  
1541 that this case will have implications for existing and  
1542 proposed privacy laws. So yes or no, do you agree with the  
1543 Supreme Court's ruling that restrictions on the collection  
1544 and use of data must first pass the First Amendment's  
1545 scrutiny?

1546 Ms. {Ramirez.} I do believe that if there is  
1547 legislation enacted in this area, there need to be  
1548 considerations that were identified by the Supreme Court in  
1549 that particular case.

1550 Mrs. {Blackburn.} Okay. Do you believe the government  
1551 must defer to less-restrictive alternatives in remedying  
1552 privacy harms as the Court found in the recent Sorrell case?

1553 Ms. {Ramirez.} Again, I think the applicable standards  
1554 of First Amendment principles apply.

1555 Mrs. {Blackburn.} Okay. All right. Let me move on  
1556 with you, then. Has anybody asked about Google+ and what you  
1557 all are doing?

1558 Ms. {Ramirez.} No.

1559 Mrs. {Blackburn.} No one has? Okay. What is the FTC  
1560 doing--I will come to you in just a minute, Chairman  
1561 Genachowski. What is the FTC doing now to oversee Google+  
1562 and the new service that apparently there are some problems

1563 with? If you will very quickly.

1564 Ms. {Ramirez.} The FTC entered into a settlement with  
1565 Google with regard to its role out of its Google Buzz  
1566 service, which was a social network service that it provided.  
1567 The proposed order, which is yet to become final, contains a  
1568 few key elements. One, it bars misrepresentations on the  
1569 part of Google with regard to data practices. It requires  
1570 Google to provide a comprehensive data privacy program and  
1571 also to conduct privacy audits.

1572 Mrs. {Blackburn.} Okay. And what is the FTC doing in  
1573 regard to Facebook and the facial recognition technology? Do  
1574 you think that poses a threat to privacy?

1575 Ms. {Ramirez.} I am afraid that I can't comment on  
1576 specific practices or specific companies. What I will tell  
1577 you is that the Agency is looking very closely at the social  
1578 networking arena as evidenced by the Google Buzz case that we  
1579 just discussed.

1580 Mrs. {Blackburn.} Okay. Thank you.

1581 Chairman Genachowski, back to who has the jurisdiction  
1582 here. How do you square this? How do you think that  
1583 overseeing the issue of privacy fits into the FCC's mission?  
1584 Because I see it more closely aligned with the FTC. So just  
1585 30 seconds on that.

1586 Mr. {Genachowski.} Congress is assigned the Federal

1587 Communications Commission force since at least 1984 the  
1588 responsibility for protecting CPNI or PII, various personal  
1589 information on communications networks. And we have  
1590 developed expertise around the engineering of those networks,  
1591 the business practices of those networks that continues to be  
1592 important even as we move forward into this new area. And so  
1593 it is the reason that we collaborate so closely with the  
1594 Federal Trade Commission. We have a joint task force where  
1595 we look together at some of these issues of overlap and we  
1596 bring different experiences and expertise to the table that I  
1597 think on a net basis is very beneficial in the area. We have  
1598 an obligation to make sure that anything we do together or  
1599 any areas of overlap and jurisdiction are communicated  
1600 clearly and that the public and industry has clear guidance  
1601 about what the landscape is and what they are supposed to--

1602 Mrs. {Blackburn.} Okay. I am over time. So thank you  
1603 so much.

1604 Mr. Strickling, you are off scot-free.

1605 Mrs. {Bono Mack.} If the gentlelady would just yield  
1606 for 10 seconds to Commissioner Ramirez. I thought I heard  
1607 Ms. Blackburn ask about Google+ and your answer was not  
1608 Google+. I was wondering if--

1609 Ms. {Ramirez.} I believe the reference was to the  
1610 Google Buzz matter.

1611 Mrs. {Blackburn.} No, ma'am. I said Google+.

1612 Ms. {Ramirez.} Okay. Again, I can't comment on  
1613 nonpublic matters, so my response was in reference to a  
1614 recent--

1615 Mrs. {Blackburn.} To Google Buzz.

1616 Ms. {Ramirez.} --court order on Google Buzz that  
1617 relates to social networking.

1618 Mrs. {Bono Mack.} Thank you just for the clarification.

1619 Mrs. {Blackburn.} Thank you, Madam Chairman.

1620 Mrs. {Bono Mack.} And the chair is happy to recognize  
1621 Mr. Butterfield for 5 minutes.

1622 Mr. {Butterfield.} Thank you very much, Madam Chairman.

1623 Right now, we are grappling with how a data security  
1624 bill should treat activities regulated under Gramm, Leach,  
1625 Bliley. We are all weary of duplicative regulation. On the  
1626 other hand, we don't want gaps in consumer protection. Both  
1627 CNN and NPR have reported that banks--which aren't within the  
1628 FTC's jurisdiction--are selling information that they collect  
1629 from credit and debit purchases. That is they are selling  
1630 their consumers entire purchase histories to retailers. All  
1631 calls for privacy legislation may be pointless if such  
1632 legislation is limited to a select group of data collectors.

1633 For example, if privacy legislation is limited to  
1634 companies within the FTC's jurisdiction, as are many of

1635 current proposals in the House and the Senate, retailers such  
1636 as Amazon would be limited in collecting and selling data  
1637 about a consumer's shopping habits, but Citibank would be  
1638 totally free to collect and sell that same information to  
1639 Amazon. Do any of you have any concerns about such a  
1640 scenario?

1641 Ms. {Ramirez.} I can address the question and I will do  
1642 it in reference to the draft bill that was discussed earlier,  
1643 the Safe Data Act, where the Agency does have a concern that  
1644 is drafted. There is a carve-out with regard to data  
1645 security and breach notification. There is a carve-out for  
1646 entities that would be subject to the FTC's jurisdiction. So  
1647 we do have a concern about that gap.

1648 Mr. {Butterfield.} Some have suggested that any data  
1649 security legislation or privacy legislation we draft should  
1650 be written very narrowly because there are sector-specific  
1651 laws on the books already. Others want it broad enough to  
1652 ensure that all gaps are covered. FTC has experienced  
1653 sharing jurisdiction in other areas. Do you support data  
1654 security or privacy legislation that could overlap with  
1655 existing sector-specific regulation? Ms. Ramirez? Yes?

1656 Ms. {Ramirez.} With regard to data security we do  
1657 support legislation, again, keeping in mind that gap that I  
1658 talked about. That is a concern. We do have limited

1659 jurisdiction in certain other respects. We do not have  
1660 jurisdiction over banks, for instance, but we do support a  
1661 general data security legislation.

1662         Mr. {Butterfield.} All right. And to the chairman, Mr.  
1663 Chairman, as you may know, the internet service providers  
1664 argue that they should not be subject to the requirements of  
1665 any data security bill that this committee might consider.  
1666 We have heard two basic arguments from them. One is that  
1667 ISPs are just so-called dump pipes and they don't know what  
1668 information is being passed to and from their customers. The  
1669 ISPs have also argued that the FTC regulation would be  
1670 duplicative because FCC regulates telecommunication service  
1671 providers through the CPNI rules that include breach  
1672 notification requirements for CPNI. Should those who provide  
1673 dump pipes--and I just heard that word for the first time the  
1674 other day--should those who provide dump pipes that sometimes  
1675 carry innocuous documents and that sometimes carry sensitive  
1676 documents also be subject to some minimum security  
1677 requirements for the data that moves along those pipes?

1678         Mr. {Genachowski.} Well, one way to look at it is from  
1679 the perspective of consumer and outcomes. I think consumers  
1680 just want to know that their private information that is put  
1681 out on networks--and they don't know all the different  
1682 details about what is this, what is that--that there are

1683 effective data security policies in place that they can rely  
1684 on. And we want that as a country because not having that  
1685 will hinder broadband adoption and the economic benefits of  
1686 broadband. So I think we need to find a way to make sure  
1687 that consumers have confidence in the safety and security of  
1688 the internet and the services that ISPs provide.

1689       Mr. {Butterfield.} CPNI is the data collected by  
1690 telecommunications companies about a consumer's telephone  
1691 calls. It includes the time, the date, duration and  
1692 destination number of each call, the type of network a  
1693 consumer subscribes to, and any other information that  
1694 appears on the consumer's telephone bill. That is pretty  
1695 vast. Does FCC under these rules protect data breaches of  
1696 content? For example, if I subscribe to the service of one  
1697 of the traditional telecom carriers and I receive a voicemail  
1698 which is content stored by that carrier, does that voicemail  
1699 information have to be secured?

1700       Mr. {Genachowski.} So there are two issues. I think  
1701 from the perspective of the FCC rules and obligations on  
1702 telephone companies, they have an obligation to provide  
1703 security. From the perspective of third parties who might  
1704 seek to hack in and get that information, that is a criminal  
1705 violation that would be prosecuted by the appropriate  
1706 authorities.

1707 Mr. {Butterfield.} Well, what about if I subscribe to  
1708 voice over IP service? I understand that voice over IP can  
1709 transcribe a subscriber's voicemail message into email and  
1710 text messages so that voicemail, email, and text will exist  
1711 as content to the extent--and Madam Chairman, I didn't  
1712 realize my time had expired. I will save it for the next  
1713 round. Thank you.

1714 Mrs. {Bono Mack.} I would allow the gentleman to answer  
1715 the question, though.

1716 Mr. {Butterfield.} Yes. All right.

1717 Mr. {Genachowski.} Well, I would say that the FCC has  
1718 applied Section 222, the CPNI provisions, to voice over the  
1719 internet. We are viewing whether there are gaps as  
1720 technology evolves, and that is something that we would look  
1721 forward to work with the committee on.

1722 Mr. {Butterfield.} All right. Thank you.

1723 Mrs. {Bono Mack.} I thank the gentleman. And the chair  
1724 now recognizes the chairman emeritus of the full committee,  
1725 Mr. Barton, for 5 minutes.

1726 Mr. {Barton.} Thank you, Madam Chairwoman.

1727 I think the questions that the committee members have  
1728 been asking point out a fundamental issue that at some point  
1729 in time we have to deal with. What information is personal  
1730 and what information is private and who controls it? We get

1731 the same question in a different format from every member of  
1732 the committee. And hopefully, in this Congress in  
1733 conjunction with our agencies we can put in the statute in  
1734 the regulation the answers to that question.

1735 My first question is pretty straightforward to the  
1736 witnesses here before us. Congressman Markey and I have  
1737 introduced a bill, H.R. 1895, which is the Do Not Track Kids  
1738 Act privacy protection of 2011. Do your agencies have a  
1739 position on that bill yet, and if so, what is it?

1740 Mr. {Strickling.} I will start. The administration has  
1741 not yet taken a position on that or any other Do Not Track  
1742 legislation at this point in time. I think, though, it is  
1743 clear and will emerge from the work we are doing now that the  
1744 idea of providing more protection for children and for  
1745 adolescents is one that we think ought to be incorporated in  
1746 the Fair Information principles that we will be proposing.

1747 Mr. {Genachowski.} And at the Federal Communications  
1748 Commission, the Agency hasn't taken a position. Speaking for  
1749 myself, the focus on children and the unique issues that are  
1750 raised by children in the context of new technologies I think  
1751 is appropriate.

1752 Mr. {Barton.} Thank you.

1753 Ms. {Ramirez.} And the FTC also has not taken a  
1754 position on the legislation but, as I have indicated earlier,

1755 the Commission does support the adoption and implementation  
1756 of a Do Not Track universal system.

1757 Mr. {Barton.} Thank you.

1758 This question is for Commissioner Ramirez at the FTC.  
1759 Several years ago a company called Google used a technique  
1760 called street mapping. This street-mapping service amassed  
1761 quite a bit of data of very private and personal information.  
1762 Google testified before this subcommittee--or at least one of  
1763 these subcommittees--about it and promised that it was done  
1764 unaware at the corporate level and they were going to make  
1765 changes. They also, in response to an inquiry by the FTC,  
1766 made fairly significant verbal assurances that they would  
1767 improve their behavior and do certain things. But apparently  
1768 that is all they did. They really didn't change their  
1769 business model and it appears to me that Google has adopted a  
1770 model of saying one thing in Washington and doing another  
1771 thing in their business practices. We might need to drop the  
1772 G from Google and just call them Oogle because of what they  
1773 appear to be doing. I am not saying that are doing it  
1774 intentionally.

1775 So my question to you, Commissioner Ramirez, when you  
1776 have a company like Google that doesn't appear to really  
1777 follow up and doesn't appear to change their business  
1778 practice, what should a regulatory agency like yours do to

1779 insist that they change business practices, and do you feel  
1780 that you have the adequate statutory authority to make that  
1781 happen or do we need to pass legislation to give you that  
1782 authority?

1783 Ms. {Ramirez.} Let me just say that I don't want to  
1784 focus on a particular company but the Agency is--

1785 Mr. {Barton.} My question is on that particular  
1786 company.

1787 Ms. {Ramirez.} What I can say is that the Agency is  
1788 very vigilant when it comes to the issues about protecting  
1789 personal information of consumers. With regard to Google, I  
1790 did mention a recent proposed order that is soon to become  
1791 final with regard to Google Buzz. In the situation that  
1792 identified, that investigation was closed and I do believe  
1793 that it highlights the limits of the FTC's jurisdiction in  
1794 the following way. The Agency has done quite a bit with its  
1795 Section 5 authority, but there are limits. If a company has  
1796 not engaged in a misrepresentation, the Agency would not be  
1797 able to use its deception authority to pursue an enforcement  
1798 action, and that was the case in the Wi-Fi matter that you  
1799 identified.

1800 Mr. {Barton.} So you think the Congress needs to give  
1801 additional statutory authority to enforce that type of an  
1802 action?

1803 Ms. {Ramirez.} The FTC is not taking a position as to  
1804 whether legislation is needed, but what I will say is that  
1805 there are limits to the Agency's Section 5 authority, and in  
1806 my personal view, there does need to be more work in order  
1807 for consumers to have basic privacy--

1808 Mr. {Barton.} Under current law, your authority is  
1809 limited?

1810 Ms. {Ramirez.} That is right. Our Section 5 authority  
1811 will not reach all practices that can cause concern in this  
1812 area.

1813 Mr. {Barton.} Okay. My time has expired, Madam  
1814 Chairwoman, but I would just point out for thoughtful  
1815 purposes, if this Congress or one of these regulatory  
1816 agencies attempted to either pass a law or pass a statute  
1817 that required every citizen to wear a transponder and keep it  
1818 active so that everywhere we went, any place we shopped would  
1819 be automatically recorded not just by the Federal Government  
1820 but would be available to the private sector for use, our  
1821 voters and citizens would come unglued. And yet if you go on  
1822 the internet without your permission, that is the basic  
1823 status quo. And I believe we need to take steps to put  
1824 privacy back into the personal realm and take it out of the  
1825 consumer marketing opportunity realm and hopefully, on a  
1826 bipartisan basis, we can begin to do that in this Congress

1827 and in this committee.

1828           And with that I want to thank my two subcommittee  
1829 chairmen and women for doing this hearing and the ranking  
1830 members of those two subcommittees for participating. Thank  
1831 you.

1832           Mrs. {Bono Mack.} I thank the gentleman and now  
1833 recognize Mr. Markey for 5 minutes.

1834           Mr. {Markey.} Thank you. Thank you, Madam Chair.

1835           I am just going to be following up upon the same line of  
1836 inquiry that the gentleman from Texas and his son Jack were  
1837 engaging in. Right now you can see his interest in child  
1838 online privacy sitting up there. He is waving to you in  
1839 thanks for the work that you are going to do to protect  
1840 children online. That is Jack Barton over there.

1841           So you heard this concern about an eraser button, you  
1842 know, that can be used to just say that children and minors,  
1843 what were they thinking going to that site? What were they  
1844 thinking putting that picture up? What were they thinking  
1845 when they were 13, 14. And in anticipation, now, of their  
1846 Senate confirmation hearing where someone has now gone and  
1847 pulled it all up or the admissions office at State U has now  
1848 got someone kind of checking out what the kid did at age 12,  
1849 13, 14, 15. And there is a whole bunch of really young  
1850 people going I know a lot of things about a lot of these

1851 candidates. That is not a good thing. There should be a way  
1852 in which that information is erased. And it would be the  
1853 parents, of course, who will want to erase it and that they  
1854 have a right to do so and the technology makes it possible  
1855 for them to do so.

1856           And again, this is not big brother. This is just big  
1857 mother and big father saying, you know, they were only 12,  
1858 they were only 13, they were only 14 to the company. We want  
1859 to be able to erase it. Do you think, Ms. Ramirez, that that  
1860 makes sense, that that be a right that parents have to be  
1861 able to have that technology available to them and that they  
1862 can erase it not just on a discretionary basis but it is  
1863 their right to see it mandated to the company that they have  
1864 to delete it for a minor, for a child?

1865           Ms. {Ramirez.} I do believe that that is an interesting  
1866 idea that is deserving of exploration and we are happy to  
1867 work with you in addressing that.

1868           Mr. {Markey.} So you are not sure if it should be a  
1869 right yet?

1870           Ms. {Ramirez.} I would like to think about it further.

1871           Mr. {Markey.} Okay, good.

1872           Chairman Genachowski?

1873           Mr. {Genachowski.} Well, two points. One is the  
1874 concerns about children are very real, very serious; and the

1875 second is empowering parents to do what they want to do when  
1876 it comes to educating, protecting their kids is also  
1877 extremely important; number three, technology as you have  
1878 indicated can help solve this. Technology can provide these  
1879 tools. And so I think this is a direction that makes sense.

1880 Mr. {Markey.} Okay. Mr. Strickling?

1881 Mr. {Strickling.} The principle no one can disagree  
1882 with. But here is, I think, the caution I would urge  
1883 everyone to keep in mind, which is for the legislature or for  
1884 the regulator to be dictating technological solutions I think  
1885 is something we need to approach with caution. We need to  
1886 establish the principles, and that is important--

1887 Mr. {Markey.} Okay. The principle would be that the  
1888 parents have a right technologically to have the information  
1889 erased and then it is up to the company to figure out what  
1890 the technology is. Would that be okay with you? The  
1891 principle is that parents should be able to get it erased.  
1892 Do you agree with that principle?

1893 Mr. {Strickling.} There is no way to disagree with that  
1894 principle--

1895 Mr. {Markey.} Okay, thank you.

1896 Mr. {Strickling.} --but I still would urge some  
1897 restraint in terms of setting down in regulation something  
1898 that could inadvertently and unintendedly lead to a loss of

1899 innovation on the internet.

1900 Mr. {Markey.} No, I appreciate that. We would depend  
1901 upon smart people to make sure that we didn't invoke the law  
1902 of unintended consequences.

1903 Mr. {Strickling.} Right.

1904 Mr. {Markey.} We would mandate to you to do it, to  
1905 protect children and give parents the right to do it and to  
1906 make sure that we don't invoke the law of unintended  
1907 consequences. Do you think you could do that?

1908 Mr. {Strickling.} So, yeah, our model would say set the  
1909 principle and then bring the stakeholders together to find  
1910 the ways to do it.

1911 Mr. {Markey.} Good. So is the same thing true on geo-  
1912 location that you shouldn't have a tracking device on a 12-,  
1913 13-, 14-year-old, you know, that the parent should be able to  
1914 have that shut off? Do you agree with that as well? Yes? I  
1915 only have a minute left. Could you say yes, please?

1916 Mr. {Strickling.} Sure.

1917 Mr. {Markey.} Okay, good. Thank you.

1918 Chairman Genachowski, it is not a good idea for a 12-,  
1919 13-, 14-year-old to have all this tracking information? Do  
1920 you agree with that?

1921 Mr. {Genachowski.} So very quickly, I think there is a  
1922 balance here that has to be done right--

1923 Mr. {Markey.} Yeah, I get it.

1924 Mr. {Genachowski.} I have a 17-year-old. I want him to  
1925 have a device where--

1926 Mr. {Markey.} How about a 12-year-old, a 13-year-old?

1927 Mr. {Genachowski.} Whatever the right age is, but at  
1928 some age, for emergency purposes, a parent might want to make  
1929 the decision.

1930 Mr. {Markey.} Okay. I got you.

1931 Mr. {Genachowski.} The parental control is a powerful  
1932 principle.

1933 Mr. {Markey.} Okay. But the technology is there to  
1934 shut it off for all other purposes other than a parent. That  
1935 is what I am saying, big mother and big father. Do you agree  
1936 with that, Ms. Ramirez?

1937 Ms. {Ramirez.} I do believe that parents should be able  
1938 to have control over that.

1939 Mr. {Markey.} Okay. Good. And finally, on the  
1940 targeting of marketing, you know, by these companies to  
1941 children and minors, do you agree that there should be a  
1942 prohibition on targeting minors? We don't let people  
1943 advertise on children's programming, you know, the kind of  
1944 products we don't think should be there with little kids. Do  
1945 you agree as well that we should have prohibitions on the  
1946 targeting of minors when it comes to, you know, these

1947 internet- and web-based services that are out there? Ms.  
1948 Ramirez?

1949 Ms. {Ramirez.} I believe that, again, parents should  
1950 have control over it and should be able to provide--

1951 Mr. {Markey.} And there should be a technology that  
1952 makes it possible?

1953 Ms. {Ramirez.} That is right.

1954 Mr. {Markey.} Yeah. Good. Mr. Genachowski?

1955 Mr. {Genachowski.} Basically, yes. There is a long  
1956 history, as you know, in the television area and I think  
1957 borrowing from what we have learned that that has worked  
1958 makes sense.

1959 Mr. {Markey.} Okay. Thank you. Mr. Strickling?

1960 Mr. {Strickling.} I would agree with the comments  
1961 already expressed.

1962 Mr. {Markey.} Thank you. Thank you, Madam Chair.

1963 Mrs. {Bono Mack.} Thank you. The gentleman's time has  
1964 expired. The chair recognizes Mr. Latta for 5 minutes.

1965 Mr. {Latta.} Well, thank you very much, Madam Chair,  
1966 and to our panel, thanks very much for being here to discuss  
1967 this issue with us today.

1968 And Mr. Strickling, if I could start, on page 1 of your  
1969 testimony, you noted that the Department of Commerce has been  
1970 working with the Internet Policy Taskforce and the White

1971 House to conduct a broad assessment of how well our current  
1972 consumer data privacy policy framework serves the consumers,  
1973 businesses, and other participants in the internet community.  
1974 Can you talk a little bit about how the recently announced  
1975 National Strategy for Trusted Identities in Cyberspace fits  
1976 in with that assessment?

1977 Mr. {Strickling.} Certainly. That is an effort, again,  
1978 a voluntary effort to allow industry to develop ways that  
1979 people can operate in the internet environment with a trusted  
1980 identity that can replace passwords and otherwise improve the  
1981 security any individual might have transacting business on  
1982 the internet. Totally voluntary, the goal is to have  
1983 industry develop these tools with government serving as a  
1984 facilitator or convener. It is very much part of our overall  
1985 multi-stakeholder approach to how to deal with these internet  
1986 policy issues.

1987 Mr. {Latta.} Okay. And just to follow up on that  
1988 because as we have been talking--you know, the whole  
1989 discussion is with the privacy and if individuals are to  
1990 participate in the identity management system, what  
1991 protections would be in place to ensure the privacy of the  
1992 information that they turn over to their credential provider.

1993 Mr. {Strickling.} Well, keep in mind that our role in  
1994 this will be to work with industry to have them develop these

1995 sort of trusted identify mechanisms. It is not that a  
1996 program that we are going out to the public with to get  
1997 people in the public to sign up for these. The idea, though,  
1998 is to create what the market and what consumers would find to  
1999 be a preferred approach to operating and transacting business  
2000 on the internet than the current system, the passwords, which  
2001 in many ways is quite insecure for people.

2002 Mr. {Latta.} Well, have you in your discussions with  
2003 the folks out there that might be developing this, have they  
2004 given you any indication how it might work then and to  
2005 protect that?

2006 Mr. {Strickling.} This effort is actually headed up by  
2007 NIST at the Department of Commerce, so I have not had any of  
2008 those conversations with industry about how they would go  
2009 about this. But the folks at NIST are leading this effort.

2010 Mr. {Latta.} If I could, could I ask if you might be  
2011 able to ask them if they could provide us with information of  
2012 what they might have at this time on that? That would be  
2013 greatly appreciated.

2014 Mr. {Strickling.} Certainly.

2015 Mr. {Latta.} And if I could go on, I have heard there  
2016 are certain allegations out there that certain foreign  
2017 nations have more onerous privacy laws on the books than we  
2018 have here in the United States, but they seem to apply those

2019 laws mainly only to American businesses. What is the  
2020 administration doing to ensure that privacy protections  
2021 aren't being used as a means of preventing American companies  
2022 from competing in the global market?

2023 Mr. {Strickling.} I will take that one. We are  
2024 involved in a lot of discussions internationally with the  
2025 goal of trying to reach some interoperability of privacy  
2026 rules around the world. We think it is absolutely critical  
2027 for American business to be able to operate in other  
2028 countries. And while those countries certainly have valid  
2029 and legitimate interests in protecting the privacy of their  
2030 citizens, we think it is in everyone's interest to find a  
2031 regime or set of regimes that are interoperable with each  
2032 other.

2033 I would mention that our emphasis on the creation of  
2034 these codes of conduct by industry working with other  
2035 stakeholders may be a way to bridge some of those differences  
2036 between the privacy protections in our country as compared to  
2037 those that might be employed in other countries, the idea  
2038 being that if we can get the various of these other countries  
2039 to recognize codes of conduct as an appropriate response to  
2040 the privacy imperatives of that nation or set of nations,  
2041 that gives industry an opportunity to create one operating  
2042 approach that meets the obligations of many different

2043 countries.

2044           So very specifically, in Europe, they are in the process  
2045 of writing the European Union Privacy Directive, and we have  
2046 had a number of conversations with the folks at the EU to  
2047 talk to them about making sure that they have a role for  
2048 codes of conduct as a way to meet these obligations. We see  
2049 that as a fast way to achieve the interoperability our  
2050 businesses need to be able to thrive internationally.

2051           Mr. {Genachowski.} If I could just echo the--this is a  
2052 very important effort. The threat to American businesses,  
2053 our economy if this doesn't succeed is very significant. And  
2054 the opportunity to make progress internationally on a set of  
2055 principles that can be complied with across multiple  
2056 jurisdictions is a window that is closing because if many  
2057 countries go ahead and adopt inconsistent regulations, ones  
2058 that make it extremely difficult, expensive, impossible for  
2059 American companies to comply with, reversing that will be  
2060 much more difficult than working now, as the Commerce  
2061 Department is doing--we are and others--to establish a level  
2062 playing field internationally from the start of this very  
2063 important growing industry.

2064           Mr. {Latta.} Thank you very much. And Madam Chair, I  
2065 see my time has expired. I yield back.

2066           Mrs. {Bono Mack.} I thank the gentleman and now

2067 recognize the gentlelady from California, Ms. Matsui, for her  
2068 5 minutes.

2069 Ms. {Matsui.} Thank you very much, Madam Chair.

2070 As I have said previously, in today's economy,  
2071 information is everything to everyone even though we might  
2072 think our personal information is not that important on  
2073 various things. We might throw things away but it is  
2074 important to somebody. And with ever-changing technologies  
2075 and applications emerging, it is essential that we properly  
2076 protect the private and personal information of consumers.  
2077 We must do it in such a way that doesn't stifle innovation.  
2078 And as I said before, I know this is a delicate balance. But  
2079 how do we find that delicate balance to ensure consumers are  
2080 aware of what information is being collected and the scope of  
2081 it while not stifling innovation?

2082 Why don't you start off, Ms. Ramirez?

2083 Ms. {Ramirez.} Yes. The approach that the FTC has  
2084 taken has been precisely to solicit input on these  
2085 complicated questions to ensure that we do undertake a  
2086 balanced approach. And the framework that has been proposed  
2087 preliminarily in staff's report issued last December is  
2088 precisely an approach that we believe balances the need for  
2089 consumer protection here as well as the needs of industry.

2090 Mr. {Genachowski.} And I would answer that. The

2091 process that our various agencies have undergone and the  
2092 process that Congress has undergone through the hearings on  
2093 this topic, they actually led to growing consensus around  
2094 some core ideas: focusing on consumer choice, transparency,  
2095 and real data security. Obviously, there are a lot of issues  
2096 in implementation, but I think where we are now collectively  
2097 as compared to where we were a year ago reflects real  
2098 progress. Obviously, now, the difficult task of converting  
2099 that into rules where necessary at agencies--or not because I  
2100 think to the point Mr. Strickling made before, industry-led  
2101 efforts here can have particular benefits if they move and if  
2102 they put those measures in place.

2103 Ms. {Matsui.} Do you have anything further to add, Mr.  
2104 Strickling?

2105 Mr. {Strickling.} Certainly. I will make it easy for  
2106 you. Pass legislation along the lines of what we recommend.  
2107 Baseline principles allow industry working with all  
2108 stakeholders to develop codes of conduct and give the FTC the  
2109 enforcement power it needs to enforce the baseline  
2110 principles. I think that is exactly the balance we want to  
2111 have. It gives industry the flexibility to craft specific  
2112 rules of behavior that meet their needs and allow them to  
2113 continue to innovate, but at the same time, it is based on a  
2114 bedrock set of a bill of rights of privacy that ensure that

2115 everyone gets a basic amount of protection.

2116 Ms. {Matsui.} Okay. Thank you.

2117 And as you know, OMB is implementing a cloud computing  
2118 initiative to improve government efficiency while saving  
2119 taxpayers money. And I do support an initiative like this.

2120 Now, Chairman Genachowski, do you support cloud  
2121 initiatives and what kind of impact do you think it will have  
2122 on our economy? And how can we ensure any potential privacy  
2123 concerns with a cloud are properly met?

2124 Mr. {Genachowski.} I strongly support these cloud  
2125 initiatives. On the part of both government, large  
2126 businesses, small business, they are efficiency-enhancing,  
2127 productivity-enhancing, they will save money. They are new  
2128 areas of tremendous growth for our economy. It is an example  
2129 of a new technology that has extraordinary opportunities that  
2130 also presents challenges. And there is no question that data  
2131 security and privacy are some of the challenges. I would not  
2132 tackle that by slowing down cloud computing. I would tackle  
2133 that by working diligently hard with industry to make sure  
2134 that security is fully protected and taking advantage of the  
2135 extraordinary technological expertise that we have in this  
2136 country to make sure that that happens.

2137 Ms. {Matsui.} Okay. Thank you.

2138 As we all know, often these policies that we are talking

2139 about are drafted in complicated legal language. And more  
2140 importantly, even if a consumer is able to understand a  
2141 privacy policy of one company, the policies can't easily be  
2142 compared from company to company. Thus, there is no means  
2143 for consumers to comparison shop for privacy in any  
2144 meaningful way. What can industry to do to improve privacy  
2145 policies and set some standards so that privacy practices can  
2146 be compared from company to company?

2147 Ms. {Ramirez.} I first want to say that I agree that  
2148 privacy policies, they way that have developed poses  
2149 significant challenges. This is particularly acute in the  
2150 mobile arena when you have a very small screen and sometimes  
2151 you have to scroll through 100 screens to read a single  
2152 privacy policy. So one of the key elements of what the FTC  
2153 has proposed in its framework is that there be simplified  
2154 consumer notice and choice. And that is an essential feature  
2155 of the framework that we are proposing.

2156 Ms. {Matsui.} Okay. I see my time is running out. Can  
2157 you two just comment quickly on this, too?

2158 Mr. {Genachowski.} I agree. I think the importance of  
2159 industry-led efforts to ensure compliance with these  
2160 principles that I think there is broad agreement on choice,  
2161 transparency, real security is an important part of what we  
2162 all need to be going forward.

2163 Ms. {Matsui.} Thank you. And Mr. Strickling?

2164 Mr. {Strickling.} We totally subscribe to transparency  
2165 and more simplicity.

2166 Ms. {Matsui.} Okay. Thank you.

2167 Thank you very much, Madam Chair.

2168 Mrs. {Bono Mack.} Thank you. The chair recognizes Mr.  
2169 Scalise for 5 minutes.

2170 Mr. {Scalise.} Thank you, Madam Chair.

2171 And I know as we are all struggling with the balance  
2172 between protecting privacy while also making sure that as  
2173 people use the internet, one of the great things about the  
2174 internet is that for the most part there are so many things  
2175 you can do free where there are services that are provided  
2176 but at the same time in many cases you are not necessarily  
2177 paying for some of those services. And of course the hook  
2178 comes in is that in many cases the things that you are doing  
2179 on the internet, there is some tracking that goes on and  
2180 ultimately it is sold to advertisers, and the advertising  
2181 money that those companies make allows them to provide the  
2182 service for free. So you have got to weigh that balance and  
2183 make sure that we can protect privacy and then also allow for  
2184 that ability for consumers who do want to participate in that  
2185 transaction to be able to still have those services offered  
2186 if they so choose. And I guess that is where we really get

2187 into the policy side is how best to make sure that framework  
2188 gives the consumer, the online user the choice.

2189 I want to first just get your take on something. There  
2190 was an article I read. It was called ``You are not Google's  
2191 Customer; You are the Product.''' And it kind of lays out an  
2192 interesting scenario of who is the product, who is the  
2193 customer. And in many cases you are a customer if you walk  
2194 into a store and you pay for something, you are the customer.  
2195 And it seems like in some cases some of these companies--not  
2196 just Google but all of the companies that have this kind of  
2197 business model--are you really the customer if you are really  
2198 not paying for anything but in fact your actions on their  
2199 website is what is used for them to then go and sell  
2200 advertising and in essence would then the advertiser be the  
2201 customer and not you? And then how does that relationship  
2202 all come down to how you as regulators treat those various  
2203 entities? And so if I could just get each of your takes on  
2204 that, that business model and how you really view--where is  
2205 the user of the service in that transaction?

2206 Mr. {Strickling.} I will give my first impression. I  
2207 haven't seen the article so I am not sure exactly the context  
2208 in which--

2209 Mr. {Scalise.} I ask unanimous consent to enter this  
2210 into the record and make it available to the witnesses as

2211 well.

2212 Mrs. {Bono Mack.} No objection.

2213 [The information follows:]

2214 \*\*\*\*\* COMMITTEE INSERT \*\*\*\*\*

|

2215           Mr. {Strickling.} That would be great, but I think I  
2216 can answer your question which is that what is key here is if  
2217 you are collecting information about people, so I think there  
2218 is nothing to be gained by a distinction between a customer  
2219 and a non-customer or a product or whatever. The issue is  
2220 information about you being collected by this particular  
2221 entity when you go online to their website. And it needs to  
2222 be made very transparent and in clear language, you know, to  
2223 you in whatever capacity you are coming to that website, what  
2224 that information is and how it is going to be used. But I  
2225 don't think the distinction is important. The question  
2226 really is are you collecting information about this  
2227 individual when they visit your website?

2228           Mr. {Scalise.} Chairman Genachowski?

2229           Mr. {Genachowski.} I would add this. We are in a  
2230 period now in this country of tremendous and technological  
2231 and business model innovation and that is a really good  
2232 thing. It is part of what makes our country great. It is  
2233 part of what will ultimately make our economy sound and  
2234 strong. And we wouldn't want to be seeing this happen in  
2235 other countries and not here. Now, new technologies, new  
2236 business models gives rise to new concerns, and it is  
2237 appropriate that we are having this discussion, this debate

2238 involving industry, involving agencies, involving Congress to  
2239 identify core principles that should be protected even as we  
2240 encourage world-leading business model and technological  
2241 innovation. And so it is what I keep coming back to and I  
2242 think Mr. Strickling--we all do--core principles that can  
2243 help provide guidance even as we make sure we are encouraging  
2244 world-leading innovation and technology in business models.

2245 Mr. {Scalise.} Thanks. Commissioner Ramirez?

2246 Ms. {Ramirez.} We also recognize that consumer  
2247 information is becoming a commodity. We do believe that you  
2248 can craft standards that take into account the benefits  
2249 provided to consumers while at the same time providing  
2250 protection. And to me, the core issue is, again, providing  
2251 transparency, providing information to consumers that they  
2252 can exercise choice. And let me just use the example of the  
2253 Do Not Track mechanism that I believe should be implemented.  
2254 I believe there can be an intermediate approach that can be  
2255 used where consumers can select what type of advertising they  
2256 are willing to receive and what type of information about  
2257 them can be collected so that in that fashion advertising  
2258 would continue. But, for instance, if a consumer doesn't  
2259 want to receive advertising relating to health information,  
2260 that would not be done, but they could receive advertising--

2261 Mr. {Scalise.} Okay. Thanks. And I have got just a

2262 few seconds. One last--Chairman Genachowski, in relation to  
2263 a question that I think Congresswoman Blackburn had asked, I  
2264 am not sure if you implied it, but it seemed like you might  
2265 have been referring to the internet as a telecommunications  
2266 service. I mean, I wouldn't consider it a telecommunications  
2267 service in that sense. Was that your intention or--

2268 Mr. {Genachowski.} I am not sure I used that phrase. I  
2269 may have referred to it as a communications network and I  
2270 think it clearly is.

2271 Mr. {Scalise.} But not a telecommunications service  
2272 because that would in terms of classification--

2273 Mr. {Genachowski.} Which I didn't intend to raise.

2274 Mr. {Scalise.} Great. No, I appreciate it. Well,  
2275 thank you all for your answers and I yield back.

2276 Mrs. {Bono Mack.} I thank the gentleman and recognize  
2277 Mr. Rush for 5 minutes.

2278 Mr. {Rush.} Thank you, Madam Chair. And Madam Chair, I  
2279 certainly want to thank you and all the other very important  
2280 people who have put together this hearing. And I want to  
2281 thank all of the witnesses for appearing before us today. I  
2282 know they are quite busy but to come over and share with us  
2283 their opinions and their conclusions.

2284 Commissioner Ramirez stated correctly, I believe, that  
2285 individuals can and do have varying privacy tolerance

2286 thresholds, and these thresholds can and do turn on several  
2287 variables, including who has their personal information and  
2288 what that information--which is personal in nature--what it  
2289 represents. And I introduced a bill in the last Congress and  
2290 reintroduced it in this Congress. It is called the Best  
2291 Practices Act, H.R. 611, which would require covered entities  
2292 to obtain express consent from consumers for collection, use,  
2293 or disclosure of particularly sensitive information or  
2294 comprehensive online data collection. Among other things, it  
2295 would give the FTC APA rulemaking authority to further modify  
2296 the definition of ``sensitive information.'' Given how  
2297 complex a person's decision-making process and all the  
2298 dependencies that are involved, I would like to ask each of  
2299 the witnesses today--and especially you, Commissioner  
2300 Ramirez--your opinion on whether such a grant of authority is  
2301 prudent and would it make for a good public policy?

2302 Ms. {Ramirez.} Again, let me just say that the FTC has  
2303 not taken a formal position on legislation but I will note  
2304 that in the privacy report that was issued in December, the  
2305 staff does recommend that sensitive information be provided  
2306 by digital data security protections and that consumers be  
2307 given an opportunity to provide express affirmative consent  
2308 for the use of that information. I also do believe that if  
2309 legislation were to be enacted, it would be beneficial to

2310 accord the agency APA rulemaking authority to make  
2311 modifications should that prove necessary with regard to the  
2312 types of sensitive information that would be protected.

2313 Mr. {Rush.} Chairman Genachowski?

2314 Mr. {Genachowski.} Let me just add that the less clear  
2315 and more confusing disclosures are about how information is  
2316 being used, the stronger the argument for an opt-in  
2317 requirement. The more clear, easy-to-understand, transparent  
2318 disclosures are, the weaker the argument is. And so it is an  
2319 area where the industry can step up, provide disclosures  
2320 about how they are using information, what they are  
2321 collecting that are so clear that make it so easy for  
2322 consumers to choose that there would be no need to have an  
2323 opt-in/opt-out debate. If the industry doesn't do that and  
2324 the disclosures are less clear/more confusing, I imagine we  
2325 will continue to hear from consumers saying we don't  
2326 understand this. We need some defaults.

2327 Mr. {Rush.} Mr. Strickling?

2328 Mr. {Strickling.} I guess I would like to take your  
2329 question up just one level because it could be raised about  
2330 any number of things and again point out, you know, our  
2331 concern about getting too detailed and too regulatory in  
2332 terms of specific prohibitions and the mechanisms that are  
2333 used to implement them. What is important we can all agree

2334 is that there be meaningful consent. None of us can predict  
2335 today what technology might be available in two or three  
2336 years by which meaningful consent could be obtained from a  
2337 consumer. And therefore, we are quite concerned about  
2338 incorporating into legislative language or in rulemakings  
2339 that by themselves will take quite some time to conduct, you  
2340 know, very specific approaches. To preserve the ability for  
2341 business to innovate, we think this is a perfect example of  
2342 where you set the principle and then ask industry working  
2343 with all stakeholders, civil society and other folks that are  
2344 interested in this to devise the rules of behavior that would  
2345 actually be engaged in and which can be changed on a regular  
2346 basis to accommodate--

2347       Mr. {Rush.} I want to move on. Commissioner Ramirez  
2348 also stated that some consumers may be more predisposed than  
2349 others to be taken advantage of, including consumers who are  
2350 put on marketing sucker lists based on their past behavior.  
2351 This may beg additional question as to what could be deemed  
2352 to be sensitive information. Along that line of logic, how  
2353 sensitive would you say other forms of compulsive disorder-  
2354 related personal information about consumers such as drugs,  
2355 sex, gambling addiction, for example? How sensitive would  
2356 those particular areas and other areas be to you?

2357       Ms. {Ramirez.} And again, I will turn to the

2358 recommendations that were made in our privacy report to  
2359 identify certain categories such as health information,  
2360 financial information, geo-location information. So those I  
2361 would classify as being sensitive.

2362 Mr. {Rush.} Commissioner?

2363 Mr. {Genachowski.} I would agree with that.

2364 Mr. {Strickling.} In our legislative proposal on data  
2365 breach in May, we provided a list of what the administration  
2366 would believe to be sensitive personal information. And I  
2367 would refer to that list.

2368 Mr. {Rush.} I yield back.

2369 Mrs. {Bono Mack.} I thank the gentleman and recognize  
2370 Dr. Cassidy for 5 minutes.

2371 Dr. {Cassidy.} Commissioner Ramirez, you helped me last  
2372 time understand what HIPAA applies to and what it does not.  
2373 Now, your opening statement was kind of like a good Hemingway  
2374 story. That first sentence kind of grabbed me and took me  
2375 off with you. So when I go to CVS and I buy my Advil for my  
2376 bad knee, is that HIPAA-protected that I just purchased Advil  
2377 over the counter or can CVS integrate that with other bits of  
2378 data so now I start getting advertisements for Advil or other  
2379 non-steroidals on my side bar as I do the net.

2380 Ms. {Ramirez.} If you go to a retailer, that would not  
2381 be protected under HIPAA. HIPAA only covers things like

2382 hospitals, medical providers. So retailers would be able to  
2383 use that information.

2384 Dr. {Cassidy.} Well, I buy glucosamine chondroitin just  
2385 to tell you more about myself than you care to know.

2386 Ms. {Ramirez.} I am sorry. Say that one--

2387 Dr. {Cassidy.} I buy something for osteoarthritis and  
2388 it is non-protected. It is over-the-counter. And they can  
2389 integrate that with other things known about me since I have  
2390 a little kind of rewards card, and that can go into this  
2391 database that says here is Bill Cassidy. Let us tag the son  
2392 of a gun.

2393 Ms. {Ramirez.} That can be done, yes.

2394 Dr. {Cassidy.} Now, what if it is a prescription  
2395 medication?

2396 Ms. {Ramirez.} Prescription medication would have other  
2397 protections, but again if, for example, one does research  
2398 online, it is conceivable that certain personal health  
2399 information could then be part of a profile that is compiled  
2400 digitally.

2401 Dr. {Cassidy.} Well, I go to PubMed, the National  
2402 Institute of Health website--I am a physician--regarding  
2403 medical information. I may look up anything I want to there.  
2404 I am a physician. So I look up hepatitis. Now, that I don't  
2405 see things on the sidebar about hepatitis. So clearly it is

2406 possible to keep that even if I start off--but let me ask you  
2407 if I go to Google and just put in hepatitis and I come up  
2408 with Wikipedia and I come up with PubMed and I go to PubMed,  
2409 the very fact that I put it into Google means that now Google  
2410 knows I am interested in hepatitis, correct?

2411 Ms. {Ramirez.} Correct.

2412 Dr. {Cassidy.} But what about my credit card company?  
2413 If my credit card company I am purchasing airplane tickets to  
2414 come to Washington, D.C., does American Express or U.S. Air  
2415 or Visa integrate that into my overall profile?

2416 Ms. {Ramirez.} I would note that the Agency doesn't  
2417 have jurisdiction over banks so there are certain safeguards  
2418 that apply to financial information that might be more  
2419 strict. So there is a difference there.

2420 Dr. {Cassidy.} Got you. The other thing I am noticing  
2421 that is in my inbox now, I will get an email from somebody  
2422 suggesting that I have requested information from them and I  
2423 happen to know that I have not. It is almost a form of  
2424 phishing. Is this something that is common now that some  
2425 bank will say you need to update your records? We see there  
2426 has been a recent change and so our--not a bank because you  
2427 don't have banks but some other company that basically  
2428 entices me to go to their website to update my records even  
2429 though I haven't used that service?

2430 Ms. {Ramirez.} There are a number of scams that we are  
2431 aware of where fraudulent operators may try to get  
2432 confidential information from consumers--

2433 Dr. {Cassidy.} I see. So that may be the company or  
2434 that may be a scam?

2435 Ms. {Ramirez.} So consumers need to be careful about  
2436 that, certainly.

2437 Dr. {Cassidy.} Yes, I got you. And now the children's  
2438 aspect of this, Commissioner--and I guess it is you--I have a  
2439 daughter who is 9 and she just kind of whizzes past. She  
2440 accepts everything, okay? I am struck that some of these do-  
2441 you-accept are so long that unless you are an obsessive  
2442 compulsive attorney you are just never going to read it. So  
2443 is it possible to surely make me fully aware of this but I am  
2444 not fully aware of it because it is somewhere on line 47 of  
2445 paragraph 42? Do you follow where I am going with that? To  
2446 put it differently, when we ask someone to opt in or opt out,  
2447 an effective technique would be to bury it within long  
2448 contract language. Is there currently any rule that would  
2449 make the companies say listen, if you are going to have them  
2450 opt in/opt out or agree to a certain type of advertising, it  
2451 has to be understandable and not buried deep within a  
2452 contract? Does that make sense? You are looking at me  
2453 blankly so was I--

2454 Ms. {Ramirez.} I am sorry. I wasn't sure if you were  
2455 speaking to--

2456 Dr. {Cassidy.} To whoever is the person--

2457 Ms. {Ramirez.} I will take this. Again, we do have  
2458 concerns about long privacy policies. One of the key elements  
2459 of the FTC's recommendations is that notice and choice be  
2460 provided in a simple, understandable manner. There is no  
2461 current requirement that that be done, but we believe as a  
2462 best practice, companies ought to do that.

2463 Dr. {Cassidy.} Got you. Okay. I yield back. Thank  
2464 you.

2465 Mrs. {Bono Mack.} Thank you, Dr. Cassidy. And the  
2466 chair recognizes Mr. Harper for 5 minutes.

2467 Mr. {Harper.} Thank you, Chairman Bono Mack.

2468 Commissioner Ramirez, I want to follow up on some  
2469 questions or an area that Mrs. Bono Mack had done regarding  
2470 harm to consumers. And does the Commission or can the  
2471 Commission provide specific examples of actual harm or we  
2472 talking more of hypotheticals?

2473 Ms. {Ramirez.} The harms that we are concerned about  
2474 are not speculation. We have heard public reports of  
2475 activities along the lines of the hypothetical that I used in  
2476 my opening statement as actually happening. Insurance  
2477 companies, for instance, today are developing models by which

2478 they can assemble information that is available to them  
2479 through this aggregation of data that we have been discussing  
2480 as a means of substituting what formerly would be more  
2481 complicated underwriting analyses. So the potential is  
2482 clearly there. There are public reports that these things  
2483 are happening today.

2484 Mr. {Harper.} Are you able to provide to us evidence or  
2485 documentation of those specific harms?

2486 Ms. {Ramirez.} The FTC, we are certainly happy to work  
2487 with you to provide more details and information about those  
2488 harms.

2489 Mr. {Harper.} All right. As we look at this, before we  
2490 look at additional regulations or we look at information,  
2491 should the Federal Government be required to show what  
2492 significant consumer harm exists to justify the type of  
2493 additional costs that we could be talking about when it comes  
2494 to market regulation on privacy or Do Not Track legislation  
2495 that that might impose upon businesses?

2496 Ms. {Ramirez.} I believe that if Congress decides to  
2497 move forward with legislation, certainly, one has to take  
2498 into account the implications for all relevant stakeholders,  
2499 yes.

2500 Mr. {Harper.} Have you done any analysis of that  
2501 potential cost, the cost to businesses for that?

2502 Ms. {Ramirez.} Again, we have solicited comments and  
2503 have received over 450 comments from industry, consumers, and  
2504 other stakeholders. We do have a Bureau of Economics that is  
2505 involved in our review and we will be putting out  
2506 recommendations later this year.

2507 Mr. {Harper.} Okay. And do you have a time frame?  
2508 Later this year--

2509 Ms. {Ramirez.} Later this year.

2510 Mr. {Harper.} --when you think that might be?

2511 Ms. {Ramirez.} I am afraid I can't be more specific.

2512 Mr. {Harper.} Okay. We will give you that much wiggle  
2513 room.

2514 Ms. {Ramirez.} I appreciate it.

2515 Mr. {Harper.} Can you tell me how much we know about  
2516 what information internet sites collect about users and how  
2517 much do we know about the sharing of that information? I  
2518 know we have covered that some in this hearing, but can you  
2519 enlighten us?

2520 Ms. {Ramirez.} I am afraid that I can't quantify the  
2521 scope. What I can tell you is that there is clearly a need  
2522 for the principles that we are advocating. There is clearly  
2523 a need for greater transparency. There is a greater need for  
2524 companies to take into account privacy protections when they  
2525 provide services and products to consumers and a greater need

2526 for simplified choice.

2527 Mr. {Harper.} You know, some critics have expressed  
2528 concern that self-regulatory schemes could constitute a  
2529 barrier to entry, perhaps erected by, you know, more powerful  
2530 market participants against smaller and newer companies. How  
2531 do we guard against such a result as that?

2532 Ms. {Ramirez.} I do think it is a concern and that one  
2533 has to take into consideration the impact on small- and  
2534 medium-sized businesses. It is an issue that the Agency is  
2535 looking at very closely and we do intend to address the issue  
2536 in our final report.

2537 Mr. {Harper.} And what would be the best alternative to  
2538 self-regulation? Is that going to work?

2539 Ms. {Ramirez.} Well, that is an issue that I think you  
2540 will have to ultimately decide as to whether or not  
2541 legislation is needed. But if one is to rely on self-  
2542 regulation, what I will say is that is very important that  
2543 there be an enforcement element. There has to be  
2544 accountability, and I think the FTC ought to play a role in  
2545 enforcement.

2546 Mr. {Harper.} Thank you, Madam Chairman. I yield back.

2547 Mrs. {Bono Mack.} Thank you. The chair recognizes Mr.  
2548 Olson for 5 minutes.

2549 Mr. {Olson.} I thank the chair. I would like to

2550 welcome the witnesses again and thank you all for coming and  
2551 giving us your expertise and your time.

2552           And my first questions are for you, Commissioner  
2553 Ramirez. I want to kind of follow up on the line of  
2554 questioning from my colleague from Mississippi, Mr. Harper,  
2555 was pursuing.

2556           In December of 2010, the FTC issued a preliminary staff  
2557 privacy report to open up discussion on consumer privacy  
2558 issues and in that report advanced the concept of Do Not  
2559 Track. This concept has been compared by the FTC and others  
2560 to the national Do Not Call Registry already managed by the  
2561 Commission, but in reality, they are very different. Do Not  
2562 Call, as you know, was created because people being bothered  
2563 by unsolicited telemarketing calls particularly during their  
2564 dinner hours. But online advertising is not invasive in that  
2565 way the way telemarketing calls are, and consumers can simply  
2566 ignore ads online when they come up. You know, in my  
2567 experience, none of my friends has slammed their computer on  
2568 the floor for online advertising, but I have seen many of  
2569 them slam the phones on the floor because of repeated calls  
2570 from telemarketers.

2571           And so there are many benefits to targeted ads online  
2572 such as giving consumers information about products and  
2573 services they might actually be interested in. This type of

2574 advertising also has great value to consumers because this  
2575 advertising revenue funds the free online content and service  
2576 consumers enjoy. But I ask you, do you concur that Do Not  
2577 Track is analogous to the Do Not Call Registry?

2578 Ms. {Ramirez.} I do not. I agree with you that there  
2579 are significant differences. First of all, the Do Not Track  
2580 system would not call for the creation of any kind of  
2581 national registry. It is also not something that has to be  
2582 implemented necessarily by government. So what the Agency  
2583 has advocated is we have put out a description of various  
2584 elements that we feel would be important, but again, the key  
2585 feature of it would be that it is a universal mechanism to  
2586 allow the consumers that do have a concern about online  
2587 collection and use of information to have greater choice and  
2588 control over how their data is being used.

2589 Mr. {Olson.} Is Do Not Track feasible now, ma'am?

2590 Ms. {Ramirez.} Yes, it is. We have a distinguished  
2591 team of technologists at the FTC and a number of companies do  
2592 agree, there is consensus that it is feasible.

2593 Mr. {Olson.} You can kind of take in my colleague from  
2594 Mississippi's line of questioning. Since you say it is  
2595 feasible, have you performed any economic analysis of  
2596 adopting a Do Not Track on our businesses?

2597 Ms. {Ramirez.} No, we have not. And again, what we

2598 have done so far is to simply identify the elements that we  
2599 think are important to a Do Not Track system but we are not  
2600 advocated a particular mechanism.

2601 Mr. {Olson.} Are you planning on doing those?

2602 Ms. {Ramirez.} We will be issuing final recommendations  
2603 at the end of the year.

2604 Mr. {Olson.} And those will include the impacts of the  
2605 economic impact?

2606 Ms. {Ramirez.} I can't comment on the details but what  
2607 I can tell you, as I mentioned before, is that we certainly  
2608 understand the importance of taking into account the impact  
2609 on business and we think that a carefully crafted standard  
2610 can be adopted that will both help restore confidence in the  
2611 online marketplace and I think businesses themselves  
2612 recognize that consumer trust is vital.

2613 Mr. {Olson.} Yes, ma'am. And I have heard from some  
2614 companies that legislation is needed to create an online  
2615 privacy framework that is technologically neutral based on  
2616 industry self-regulation and enforced exclusively by the FTC.  
2617 And with respect to technological neutrality, is it true  
2618 today that the FTC and FCC would have jurisdiction over the  
2619 download of a video on demand from a cable company but only  
2620 the FTC would have jurisdiction over the download of a video  
2621 from an over-the-top provider like Netflix? Anybody can

2622 chime in there. You are the experts.

2623 Mr. {Genachowski.} I think that is probably a correct  
2624 description of the current framework.

2625 Mr. {Olson.} So can we come up with a proposition where  
2626 we can have some common system where there is one regulator?

2627 Mr. {Genachowski.} I am not sure that that is the  
2628 answer. The FCC and the FTC have worked very well together  
2629 over more than 20 years in areas of complementary  
2630 jurisdiction to make sure that the expertise and experience  
2631 that are different that each agency brings to the table  
2632 informs solutions that get the balance right between taking  
2633 in the account of impact on our economy and protecting basic  
2634 values like privacy.

2635 Mr. {Olson.} Okay. Thank you. And again, with respect  
2636 to industry self-regulation--and this is mainly for you,  
2637 Commissioner Ramirez--can you please advise the committee  
2638 whether the FTC uses industry self-regulation in other  
2639 contexts to protect consumers and what role the FTC believes  
2640 industry self-regulation should have in protecting customers'  
2641 online privacy?

2642 Ms. {Ramirez.} Yes. We believe that self-regulation  
2643 can play a key role. In fact, the FTC alone cannot undertake  
2644 the effort that is necessary here to ensure that consumers  
2645 have basic protections. So we think self-regulation is vital

2646 but again provided that there is an accountability mechanism,  
2647 an enforcement mechanism and we believe that the FTC ought to  
2648 provide that.

2649 Mr. {Olson.} Thanks to the answers to the questions. I  
2650 see that the clock is going up and that means I will yield  
2651 back the balance of my time.

2652 Mrs. {Bono Mack.} Thank you, Mr. Olson. The chair  
2653 recognizes Mr. Kinzinger for 5 minutes.

2654 Mr. {Kinzinger.} Thank you. And thank you, Madam  
2655 Chairman, and thank you--

2656 Mrs. {Bono Mack.} Excuse me. Can you check your  
2657 microphone?

2658 Mr. {Kinzinger.} Yeah, it is on.

2659 Mrs. {Bono Mack.} Probably the one next--yeah. Thank  
2660 you.

2661 Mr. {Kinzinger.} Well, thank you. Thank you for coming  
2662 out. I appreciate it.

2663 The explosive expansion we have seen in online marketing  
2664 and tracking over the past few years has been unprecedented.  
2665 From 2010 to 2014, the industry is projected to grow to about  
2666 \$2.6 billion from \$1.3 billion in 2010. As a consumer who  
2667 uses free services that have been made available by the  
2668 internet, I understand the value of behavior advertising and  
2669 the effect it is having on this country's economic growth and

2670 job creation. Any privacy legislation that this committee  
2671 considers must fully contend with the implications of what  
2672 slower growth will have on both our economy and the services  
2673 provided to the consumer.

2674         It is estimated that privacy legislation could cost the  
2675 industry as much as \$623 million in growth if the legislation  
2676 imposes limits on online tracking. I am also keenly aware  
2677 that the decisions we make in this committee will profoundly  
2678 impact the question of whether or not privacy is still a  
2679 right in this country. The accelerated accumulation of  
2680 aggregated data over the past few years is troubling for many  
2681 consumers. I believe one important action this committee  
2682 should take is determine what type of information is  
2683 aggregated. Do a few companies control both sensitive health  
2684 information and my shoe size? And as a consumer, am I  
2685 allowed to know what information is stored about me? These  
2686 are all important issues that I believe we need to consider  
2687 when drafting privacy legislation.

2688         So while some of these may have been asked in a  
2689 different way, I will ask the first question to Commissioner  
2690 Ramirez. What impact do you think Do Not Track legislation  
2691 will have specifically on free internet service itself?

2692         Ms. {Ramirez.} Well, I think it all depends on how a Do  
2693 Not Track mechanism is implemented. And of course, that is

2694 the key question. What the FCC has done is to outline what  
2695 it considers to be the core elements that any such mechanism  
2696 ought to have in order to assure basic protections for  
2697 consumers and to allow them to have choice. And again, the  
2698 emphasis here is on choice. I personally believe that a  
2699 mechanism can be constructed that I would call an  
2700 intermediate option that would allow consumers to have  
2701 granular choice about what type of advertising to receive.  
2702 And I think such a system would benefit both consumers and  
2703 industry.

2704 Mr. {Kinzinger.} Okay. And I guess to all three of  
2705 you, do you believe consumers have a right to know as far as  
2706 what information is obtained and on them both in the online  
2707 and in the offline space and how do we determine what  
2708 information is private and what is not? Again, this may have  
2709 been addressed but I am curious as to--you know, do consumers  
2710 have the right to know? And then also how do we determine  
2711 what should be private and what shouldn't just generally?  
2712 Mr. Strickling, go ahead.

2713 Mr. {Strickling.} Yes, we think one of the fair  
2714 information practices should incorporate this notion of the  
2715 consumers knowing what is being collected about them and how  
2716 it is going to be used. As a broader point, though, I would  
2717 just say that the specific regulation about how that be done

2718 is not something we proposed either Congress or a regulatory  
2719 agency do. Again, we see the benefits. And this goes to  
2720 your question about the costs that legislation and regulation  
2721 impose on businesses. We think it is vitally important that  
2722 we give industry the opportunity to take the principles and  
2723 then create the voluntary codes of conduct that they will  
2724 commit to live by without sacrificing innovation, without  
2725 costing them the dollars that perhaps a less-well-crafted  
2726 regulation might impose on them.

2727 Mr. {Kinzinger.} Okay. Sir?

2728 Mr. {Genachowski.} I agree.

2729 Mr. {Kinzinger.} We are all in agreement? Great. That  
2730 is easy. Those are easy questions. No, I am kidding.

2731 All right. Do we know the amount of data that companies  
2732 are collecting specifically and do we know how that is being  
2733 collected, bought, and sold? I know that is pretty basic,  
2734 too.

2735 Ms. {Ramirez.} I am sorry. Could you again--I didn't  
2736 quite hear--

2737 Mr. {Kinzinger.} Yeah, do we know the amount of data  
2738 that companies are actually collecting on consumers and do we  
2739 know how that is bought and sold?

2740 Ms. {Ramirez.} As I mentioned before, I can't quantify  
2741 exactly what is taking place. What we do know is that

2742 information is being compiled and that there are very  
2743 significant concerns. Again, the hypothetical that I used in  
2744 my opening statement highlights how this information can be  
2745 used. And again, this is not speculation. That is happening  
2746 today.

2747 Mr. {Kinzinger.} Sure. Well, I appreciate everybody's  
2748 patience and everybody coming in and spending some time with  
2749 us, and I look forward to continuing to tackle this problem.

2750 And I yield back.

2751 Mrs. {Bono Mack.} Thank you very much.

2752 And Mr. Rush has asked for a second round of a single  
2753 question and the ranking member and I have agreed to allow  
2754 Mr. Rush to ask one more question before we conclude.

2755 Mr. {Rush.} I really want to thank you, Madam Chair,  
2756 and the ranking member for your kind indulgence. I also  
2757 thank the witnesses.

2758 This morning and this afternoon, you have been asked  
2759 over and over what is the harm if a consumer website, social  
2760 network, or supermarket knows about my personal habits and my  
2761 private life? And today's testimony references have been  
2762 made to broadband's possible effects on job creation and  
2763 productivity. Assuming Americans are unemployed and  
2764 searching for work, are there some issues that we may be  
2765 overlooking regarding privacy safeguards that may be making

2766 it more difficult for Americans to obtain employment?  
2767 Specifically, Commissioner Ramirez, has the FTC heard  
2768 complaints from the public suggesting that their efforts to  
2769 obtain jobs have somehow been hampered or harmed due to any  
2770 privacy-related abuses?

2771 Ms. {Ramirez.} Yes. And I think a number of the  
2772 enforcement matters that the Agency has brought I think it  
2773 shows that there is a failing sometimes with regard to basic  
2774 privacy protections. And those are highlighted in the  
2775 written testimony that I have submitted.

2776 But in addition to that, there is survey after survey  
2777 that shows that consumers increasingly are very concerned  
2778 about how their information is being used. So I think there  
2779 is evidence that supports the idea that additional privacy  
2780 protection is needed.

2781 Mr. {Rush.} Mr. Genachowski, do you want to comment on  
2782 this particular matter?

2783 Mr. {Genachowski.} I think that the relationship  
2784 between what happens in the privacy arena and achieving the  
2785 economic and job-creation potential of the internet really  
2786 are related. And so being very thoughtful about that is  
2787 important. I mentioned in my opening statement the  
2788 relationship between trust of the internet and increases in  
2789 broadband adoption in a world where almost all job postings

2790 are online. So I think you are raising a very important set  
2791 of sensitivities that need to be very carefully considered in  
2792 this area.

2793 Mr. {Rush.} Thank you. I yield back.

2794 Mrs. {Bono Mack.} I thank the gentleman. And on his  
2795 point I want to again reiterate that his question was a  
2796 terrific one while we are here and the extensive  
2797 deliberations and thought we need to put into all of this as  
2798 we move forward. And as you know, this is a first in a  
2799 series of privacy hearings that we will be holding this year,  
2800 and I look forward to our continued discussions and our work  
2801 together on how we can best balance these needs that  
2802 everybody has brought up today. And it is clear to me anyway  
2803 that personal data truly is a gold rush of our time.

2804 And I would like to say Commissioner Ramirez, in her  
2805 written testimony, referred to a statement by her fellow  
2806 Commissioner Rush with his separate views on internet privacy  
2807 and it has been shared with minority staff. And with  
2808 unanimous consent, it will be included in the record. And  
2809 without objection, so ordered.

2810 [The information follows:]

2811 \*\*\*\*\* COMMITTEE INSERT \*\*\*\*\*

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2812           Mrs. {Bono Mack.} And I would like to thank my  
2813 colleagues for their participation today. I would like to  
2814 thank the ranking members on both subcommittees as well as  
2815 Chairman Walden. I would like to wish Joe Barton good luck  
2816 tonight in the congressional baseball game and remind you all  
2817 to attend if you are interested and remind members that they  
2818 have 10 business days to submit questions for the record. I  
2819 ask witnesses to please respond promptly to any questions  
2820 they receive. And again, I thank our panelists very much for  
2821 your time today. And the hearing is now adjourned.

2822           [Whereupon, at 1:35 p.m., the subcommittees were  
2823 adjourned.]