



**International Working Group on Data Protection in Telecommunications
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**Country Report
United States of America
(provided by EPIC)**

I. Major U.S. Privacy Developments

CLOUD Act

The Clarifying Lawful Overseas Use of Data (CLOUD) Act, signed into law on March 23, 2018, provides trans-border access to communications data in criminal law enforcement investigations. The Act's history begins with a privacy dispute between Microsoft and the U.S. government.¹ In *United States v. Microsoft*, the U.S. Supreme Court was considering whether law enforcement agents in the United States can compel a US Internet company to turn over personal data stored in a foreign jurisdiction.² With the passage of the CLOUD Act, the Department of Justice moved to dismiss the case.³

There are two key elements of the CLOUD Act - the provisions for U.S. access to foreign stored data, and the provisions to create executive agreements for foreign access to U.S. stored data. First, the Act amends U.S. law to allow U.S. law enforcement to unilaterally access to data stored outside the U.S.⁴ Where the U.S. orders a company to produce communications data, the Act allows a provider to challenge the order where complying would risk violating foreign law. A court will consider the order, including using a "comity" analysis to assess foreign interests at stake. A U.S. court may still require production of that communications data over that objection, even where the laws of another nation would be violated.

The Act would also permit federal officials to enter into executive agreements granting foreign access to data stored.⁵ Federal officials must first decide a foreign government gives sufficient protection to privacy and civil liberties, and the foreign government must agree to abide by certain other limitations, including minimizing any U.S. person data collected. Though Congress may formally object to an executive agreement, the decision need only be certified by executive branch officials. The decision is unreviewable in court.

In an *amicus brief* submitted in *United States v. Microsoft*, EPIC urged the Supreme Court to respect international privacy standards, citing key cases from the European Court of

¹ Consolidated Appropriations Act, 2018, H.R. 1625, Div. V, 115th Cong., 2d Sess. (2018) (including the CLOUD Act) [hereinafter CLOUD Act].

² EPIC, *United States v. Microsoft*, Epic.org, <https://epic.org/amicus/ecpa/microsoft/>.

³ Motion to Vacate the Judgment of the Court of Appeals and Remand the Case with Directions to Dismiss as Moot, *United States v. Microsoft*, No. 17-2 (Mar. 2018), https://www.justice.gov/sites/default/files/briefs/2018/03/31/17-2_microsoft_opposed_motion_to_vacate.pdf.

⁴ CLOUD Act § 3.

⁵ CLOUD Act § 5.

Human Rights and the European Court of Justice.⁶ EPIC warned that "a ruling for the government would also invite other countries to disregard sovereign authority."⁷

Facebook-Cambridge Analytica: FTC Failure to Enforce Consent Order

On March 18, 2018, investigative reporting revealed Facebook disclosed the personal data of 50 million users without their consent to Cambridge Analytica, the controversial British data mining firm that sought to influence the 2016 presidential election.⁸

The unlawful disclosure of user records to the data mining firm likely violated a 2011 FTC Consent Order against Facebook that resulted from a sustained campaign by US privacy organizations.⁹ In 2009, EPIC and a coalition of US consumer privacy organizations filed an extensive complaint with the FTC following Facebook's repeated changes to the privacy settings of users.¹⁰ In 2011, the FTC agreed with EPIC and established a far-reaching settlement with the company that prevented such disclosures, prohibited deceptive statements, established independent auditing, and required annual reporting over 20 years.¹¹

After the disclosure to Cambridge Analytica was revealed, EPIC and consumer privacy organizations wrote the Commissioners, calling on the FTC to "immediately undertake an investigation and issue a public report as to whether Facebook complied with the 2011 Order."¹² The FTC has confirmed it has an open investigation into Facebook.¹³ Forty-one state

⁶ Brief for EPIC and Thirty-Seven Technical Experts and Legal Scholars as Amici Curiae in Support of Respondent, *United States v. Microsoft*, No. 17-2 (Jan. 18, 2018), <https://epic.org/amicus/ecpa/microsoft/US-v-Microsoft-amicus-EPIC.pdf>.

⁷ *Id.*

⁸ Matthew Rosenberg, Nicholas Confessore, & Carole Cadwalladr, *How Trump Consultants Exploited the Facebook Data of Millions*, N.Y. Times (Mar. 17, 2018), <https://www.nytimes.com/2018/03/17/us/politics/cambridge-analytica-trump-campaign.html?hp&action=click&pgtype=Homepage&clickSource=story-heading&module=first-column-region®ion=top-news&WT.nav=top-news>.

⁹ Marc Rotenberg, *How the FTC Could Have Prevented the Facebook Mess*, Techonomy (Mar. 22, 2018), <https://techonomy.com/2018/03/how-the-ftc-could-have-avoided-the-facebook-mess/>; Letter to Acting FTC Chair Maureen Ohlhausen, "FTC 2017: 10 Steps for Protecting Consumers, Promoting Competition and Innovation" (Feb. 15, 2017) ("*1. The FTC Must Enforce Existing Consent Orders*"), <https://epic.org/privacy/internet/ftc/EPIC-et-al-ltr-FTC-02-15-2017.pdf>.

¹⁰ EPIC, et al, *In the Matter of Facebook, Inc. (Complaint, Request for Investigation, Injunction, and Other Relief)* (Dec. 17, 2009), <https://epic.org/privacy/infacebook/EPIC-FacebookComplaint.pdf>.

¹¹ Press Release, Facebook Settles FTC Charges That It Deceived Consumers By Failing To Keep Privacy Promises (Nov. 29, 2011), <https://www.ftc.gov/news-events/press-releases/2011/11/facebook-settles-ftc-charges-it-deceived-consumers-failing-keep>.

¹² Letter from EPIC, et. al, to FTC Acting Chairman & Commissioner (Mar. 20, 2-018), <https://epic.org/privacy/facebook/EPIC-et-al-ltr-FTC-Cambridge-FB-03-20-18.pdf>.

attorneys general have also launched an investigation into Facebook's privacy practices.¹⁴ EPIC has filed a Freedom of Information Act request to obtain from the FTC the biannual reports required by the Consent Order.¹⁵

The United States Congress will likely hold hearings on Facebook in April. The Senate Judiciary Committee has scheduled a hearing with Mark Zuckerberg on April 10, 2018.¹⁶

Section 702 Foreign Intelligence Surveillance Act Extended without Privacy Safeguards

In a decision that could jeopardize renewal of the Privacy Shield, the U.S. Congress has renewed "Section 702" of the Foreign Intelligence Surveillance Act, which permits broad surveillance of individuals outside of the United States.¹⁷ In addition to extending Section 702, the Act also permits the US government to renew the controversial "about" collection program.¹⁸ Congress rejected privacy safeguards, including limits on data collection, that would help preserve the EU-U.S. Privacy Shield.¹⁹

Since 702's extension, EPIC and other leading open government organizations have urged Congress to promote transparency and accountability of the Intelligence agencies.²⁰ The groups called for the release of annual public reports, all significant opinions by the Foreign Intelligence Surveillance Court and the Justice Department's Office of Legal Counsel.

¹³ Press release, Statement by the Acting Director of FTC's Bureau of Consumer Protection Regarding Reported Concerns about Facebook Privacy Practices (Mar. 26, 2018), <https://www.ftc.gov/news-events/press-releases/2018/03/statement-acting-director-ftcs-bureau-consumer-protection>.

¹⁴ Press release, Attorney General Shapiro Leads Bipartisan Coalition of State AGs in Demanding Answers from Facebook Attorney General Shapiro Leads Bipartisan Coalition of State AGs in Demanding Answers from Facebook (Mar. 26, 2018), <https://www.attorneygeneral.gov/taking-action/press-releases/attorney-general-shapiro-leads-bipartisan-coalition-of-state-ags-in-demanding-answers-from-facebook/>.

¹⁵ EPIC, *EPIC FOIAs FTC, Seeks Facebook's Privacy Assessments*, Epic.org (Mar. 20, 2018), <https://epic.org/2018/03/epic-foias-ftc-seeks-facebooks.html>.

¹⁶ Press release, Chairman Grassley Announces Hearing on the Future of Data Privacy in Social Media (Mar. 26, 2018), <https://www.judiciary.senate.gov/press/rep/releases/chairman-grassley-announces-hearing-on-the-future-of-data-privacy-in-social-media>.

¹⁷ EPIC, *Foreign Intelligence Surveillance Act (FISA)*, Epic.org <https://epic.org/privacy/surveillance/fisa/>.

¹⁸ The FISA Amendment Reauthorization Act of 2018, Public Law No: 115-118, 132 Stat. 3 (2018).

¹⁹ EPIC, *Privacy Shield EU-U.S. Data Transfer Arrangement*, Epic.org, <https://epic.org/privacy/intl/privacy-shield/>.

²⁰ Letter from EPIC, et.al, to Paul Ryan, Speaker of the House, and Nancy Pelosi, Minority Leader (Feb. 8, 2018), <https://www.openthegovernment.org/sites/default/files/Reforms%20in%20light%20of%20Nunes%20Memo%20final.pdf>.

Investigation of the Russian Interference in 2016 Presidential Election

The Special Counsel investigation of the Russian interference in the 2016 presidential election continues. In a move worthy of special note, Special Counsel Robert Mueller recently indicted thirteen Russian nationals and three Russian entities for interfering in the election cycle.²¹ "Beginning as early as 2014" the defendants began operations "to interfere with the U.S. political system" and "sow discord," the indictment explains. They also posed as U.S. persons online, reaching "significant numbers of Americans" on social media. EPIC first sought details of the Russians' "multifaceted" influence campaign in January 2017, pursuing release of the complete Intelligence Community assessment on Russian meddling under the Freedom of Information Act.²² EPIC President Marc Rotenberg also highlighted the role of the Russian Internet Research Agency, named in the Mueller indictment, explaining, "Facebook sold advertising to Russian troll farms working to undermine the American political process."²³

Simultaneously, several congressional investigations of the Russian interference still continue. The Senate Intelligence Committee held a public hearing with top officials from all U.S. intelligence agencies: Office of the Director of National Intelligence, CIA, NSA, Defense Intelligence Agency, FBI, and the National Geospatial-Intelligence Agency.²⁴ The officials unanimously agreed that Russia interfered in the 2016 election and will interfere in the 2018 election, noting that they have already observed attempts to influence upcoming elections. Director of National Intelligence Dan Coats said: "There should be no doubt that Russia perceived that its past efforts as successful and views the 2018 U.S. midterm elections as a potential target for Russian influence operations." The House Intelligence Committee investigation was terminated with Republicans on the committee stating they found no evidence of collusion between the Trump campaign and the Russians, but the decision to terminate was divided along party lines.²⁵

EPIC is currently pursuing several FOIA cases concerning Russian interference, including *EPIC v. FBI* (cyberattack victim notification),²⁶ *EPIC v. IRS* (release of Trump's tax returns),²⁷ and *EPIC v. DHS* (election cybersecurity).²⁸ In *EPIC v. FBI*, EPIC obtained the FBI's

²¹ Indictment, *United States v. Internet Research Agency*, No. 17-cr-032 (D.D.C. Feb. 16, 2018),

²² EPIC, *EPIC v. ODNI (Russian Hacking)*, Epic.org, <https://www.epic.org/foia/odni/russian-hacking/>.

²³ Marc Rotenberg & Larry Irving, *Twenty-Five Years Later: What Happened to Progressive Tech Policy?*, Wash. Spectator (Jan. 22, 2018), <https://washingtonspectator.org/rotenberg-tech-policy/>.

²⁴ World Wide Threats, *Hearing Before the S. Select Comm. on Intelligence*, 115th Cong. (2018), <https://www.intelligence.senate.gov/hearings/open-hearing-worldwide-threats-hearing-1>.

²⁵ Erin Kelly, *Russia probe: House intel Republicans end investigation, find 'no evidence' of collusion*, USA Today (Mar. 12, 2018), <https://www.usatoday.com/story/news/politics/2018/03/12/russia-probe-house-intel-republicans-end-investigation-despite-dem-protests/411745002/>.

²⁶ EPIC, *EPIC v. FBI (Russian Hacking)*, Epic.org, <https://epic.org/foia/fbi/russian-hacking/>.

²⁷ EPIC, *EPIC v. IRS (Donald Trump's Tax Records)*, Epic.org, <https://epic.org/foia/irs/trump-taxes/>.

"Victim Notification Procedures" that would have applied during the 2016 Presidential election.²⁹ Based on the documents uncovered by EPIC, a recent AP investigation found that the FBI, the lead agency for cyber response, did not notify U.S. officials that their email accounts were compromised during the 2016 presidential election.³⁰

Election Security

Congressional Task Force Releases Report on Election Security

The Congressional Task Force on Election Security released its final report detailing vulnerabilities in U.S. election systems.³¹ The report includes many recommendations, purchasing voting systems with paper ballots, post-election audits, and funding for IT support. The report also proposes a national strategy to counter efforts to undermine democratic institutions. Election experts have said that Congress has not done enough to safeguard the mid-term elections.

EPIC previously testified before the Election Assistance Commission on the Voting System Guidelines.³² EPIC urged the Commission to "offer clear and effective guidance to states on issues of functional capability, hardware, software, telecommunication, security, quality assurance, and configuration of voting systems."

National Security Strategy Acknowledges Importance of Democratic Institutions

The White House has released the 2017 National Security Strategy. The report underscores the importance of democratic institutions and the rule of law.³³ The report states the "government must do a better job of protecting data to safeguard information and the privacy of the American people," and calls out "actors such as Russia [who] are using information tools in an attempt to undermine the legitimacy of democracies."³⁴ The report also cautions that cyber policy must be pursued "In accordance with the protection of civil liberties and privacy."

²⁸ EPIC, *EPIC v. DHS (Election Cybersecurity)*, Epic.org, <https://epic.org/foia/dhs/cybersecurity/russian-interference/>.

²⁹ EPIC, *EPIC FOIA: Production EPIC v. FBI*, Epic.org, <https://epic.org/foia/fbi/russian-hacking/EPIC-16-12-22-FBI-FOIA-20170511-Production-2.pdf>

³⁰ Raphael Satter, et. al, *FBI gave heads-up to fraction of Russian hackers' US targets*, AP (Nov. 28, 2018), <https://www.apnews.com/f1a5570b7ce04d39bab00ae3a9041460/FBI-didn't-tell-US-targets-as-Russian-hackers-hunted-emails>.

³¹ Congressional Taskforce on Election Sec., Final Report (2018), <https://democrats-homeland.house.gov/sites/democrats.homeland.house.gov/files/documents/TFESReport.pdf>.

³² Lillie Coney, EPIC Assoc. Dir. and NCVI Coordinator, Written Statement for Advocates Roundtable Discussion Before the Election Assistance Comm'n Election Integrity (2008), https://epic.org/privacy/voting/eac_test4_24.pdf.

³³ White House, National Security Strategy (2018), <https://www.whitehouse.gov/wp-content/uploads/2017/12/NSS-Final-12-18-2017-0905-1.pdf>.

³⁴ Id. at 13, 14.

EPIC supports many of the goals stated in the report, including enhanced cybersecurity, support for democracy, and protection of human rights, and wrote to Congress seeking assurances that those goals will remain priorities. EPIC also said, "perhaps it is a firewall and not a border wall that the United States needs to safeguard our national interests at this moment in time."³⁵

Senators urge FTC to Investigate Companies Selling Social Media Influence

Senators Jerry Moran (R-KS) and Richard Blumenthal (D-CT) wrote Federal Trade Commission Acting Chair Maureen Ohlhausen to urge the FTC to investigate companies that use fraudulent automated accounts to influence social media.³⁶ The techniques, known as "amplification bots," follow, retweet, and like social media content to boost a client's visibility. The Senators' letter follows a recent New York Times report on Devumi, a company engaged in such practices.³⁷ Devumi's bots often steal identities, using the photos and personal information of real people, some of whom are minors. The Senators called these practices a "unique kind of social identity theft" that "have the effect of distorting the online marketplace and creating a false sense of celebrity, credibility, or importance in people, companies, or institutions that may not deserve it." The practice also violates state privacy laws concerning "the right of publicity," which EPIC has defended.³⁸

FEC Proposes Regulation of Internet Political Ads

On March 14, 2018, the Federal Election Commission voted unanimously, at a public meeting, to publish a proposed rule concerning transparency requirements for online political ads.³⁹ The FEC will publish the proposal in the Federal Register, accept comments from the public, and then hold a public hearing on June 27, 2018. In comments to the FEC in November 2017, EPIC explained the "need to protect democratic institutions from foreign adversaries has never been greater...To help ensure the integrity of U.S. elections, the Federal Election

³⁵ Letter from EPIC, to John McCain, Chairman of the Senate Armed Servs. Comm., and Jack Reed, Ranking Member (Jan. 24, 2018), <https://epic.org/EPIC-SAS-NatlSecurity-Jan2018.pdf>.

³⁶ Letter from Jerry Moran, Chairman Subcomm. on Consumer Protection, and Richard Blumenthal, Ranking Member, to Maureen Ohlhausen, Acting Chairman, Fed. Trade Comm'n (Jan. 30, 2018), <https://www.blumenthal.senate.gov/imo/media/doc/01.31.2018%20Letter%20to%20FTC%20re%20Devumi%20and%20Fake%20Followers.pdf>.

³⁷ Nicholas Confessore, et. al, *The Follower Factory*, N.Y. Times (Jan. 27, 2018), <https://www.nytimes.com/interactive/2018/01/27/technology/social-media-bots.html>.

³⁸ *Impact and Policy Implications of Spyware on Consumers and Businesses: Hearing before the S. Comm. on Commerce, Science and Transportation*, 110th Cong. (2008) (written testimony of Marc Rotenberg, EPIC President).

³⁹ Fed. Election Comm'n, Reg 2011-02 Internet Communication Disclaimers and Definition of "Public Communication" (2018), https://www.fec.gov/resources/cms-content/documents/mtgdoc_18-12-a.pdf.

Commission should not exempt technology companies from notification requirements for Internet communications."⁴⁰ The FEC noted EPIC's comments in its proposal.

Administration Nominates Three Privacy and Civil Liberties Oversight Board Members

The Administration has now nominated three new Privacy and Civil Liberties Oversight Board Members. The Privacy and Civil Liberties Oversight Board provides oversight and advice over executive branch intelligence activities.⁴¹ Following on Adam Klein's nomination in Summer 2017, the administration nominated Ed Felten and Jane Nitze in March 2018.⁴² Ed Felten is a member of the EPIC Advisory Board, is a professor of computer science and public affairs at Princeton and was formerly the Deputy U.S. Chief Technology Officer for the White House. Jane Nitze was formerly an attorney with the Justice Department Office of Legal Counsel.

Adam Klein has had a hearing before the Senate, but his nomination has yet to be put to Senate vote.⁴³ Klein has expressed the view that the privacy intrusion of certain section 702 practices is limited.⁴⁴ In advance of his nomination hearing, EPIC urged the Senate to oppose the nomination. EPIC also said that the nominee "does not appreciate the full extent of the privacy interests at stake in many of the most significant debates about the scope of government surveillance authority."⁴⁵

Four New FTC Commissioners Nominated

After long-term failure to fill Federal Trade Commission's leadership, the Trump administration has nominated four new commissioners to the FTC. The nominees were approved preliminarily by Senate committee and now must be confirmed by full Senate vote.⁴⁶

In 2017, the FTC's leadership was reduced to two out of five Commissioners.⁴⁷ The FTC has been without full membership or an appointed chairman for over a year. President Trump has

⁴⁰ Comments of EPIC to the Fed. Election Comm'n on Internet Communication Disclaimers; Reopening of Comment Period (Nov. 3, 2017), <https://epic.org/apa/comments/EPIC-FEC-PoliticalAds-Nov2017.pdf>.

⁴¹ PCLOB, *History and Mission*, <https://www.pclob.gov/about/>.

⁴² White House, *President Donald J. Trump Announces Key Additions to his Administration*, Whitehouse.gov (Mar. 13, 2018), <https://www.whitehouse.gov/presidential-actions/president-donald-j-trump-announces-key-additions-administration-33/>.

⁴³ Hearing on the Nomination of Adam Klein, 115th Cong. (2018), <https://www.judiciary.senate.gov/meetings/01/24/2018/nominations>.

⁴⁴ Adam Klein, *Connect the Dots to Stop Terror Plots*, Wall Street Journal (July 26, 2017), <https://www.wsj.com/articles/connect-the-dots-to-stop-terror-plots-1501106621>.

⁴⁵ Letter from EPIC to Chick Grassley, Chairman of the Senate Comm. on the Judiciary, and Richard Blumenthal, Ranking Member (Jan. 23, 2018), <https://epic.org/EPIC-SJC-PCLOB-Jan2018.pdf>.

⁴⁶ Harper Neidig, *Senate panel approves Trump's FTC nominees*, Hill (Feb. 28, 2018), <http://thehill.com/policy/technology/375991-senate-commerce-approves-trumps-ftc-nominees>.

recently nominated four new commissioners, while acting chairwoman Meureen Ohlhausen is poised to leave.⁴⁸ Antitrust attorney Joseph Simons, a Republican, was nominated for chair of the Commission.⁴⁹ Senate staffer Noah Phillips and Delta Airlines vice president Christine Wilson were nominated for Republican seats.⁵⁰ Former assistant director to the Consumer Financial Protection Bureau Rohit Chopra was nominated for a for a Democratic seat.⁵¹ An additional nominee is needed to fully staff the Commission. Democrat Terrell McSweeney continued to serve as commissioner past the expiration of her appointment.⁵²

Without full membership, the future of U.S. consumer privacy enforcement was increasingly uncertain. As part of its 10 Recommendations for the FTC's five-year strategic plan EPIC detailed how the FTC can accomplish its mission of protecting consumers and promoting competition in the 21st century, including fully enforcing its legal judgments and introducing legislative proposals to safeguard consumer privacy.⁵³

Privacy Shield Ombudsperson Still Un-Appointed

The U.S. has failed to appoint a Privacy Shield Ombudsperson, a clear requirement of the EU-U.S. privacy Shield.⁵⁴ A holdover official from the Obama administration still temporarily holds the position - Acting Assistant Secretary for the Bureau of Oceans and International Environmental and Scientific Affairs Judy Garber.⁵⁵

EPIC recently submitted a statement U.S. Congress citing urgent concerns over the adequacy of the Privacy Shield and recommending specific steps to protect fundamental rights.⁵⁶ EPIC also stated a Privacy Shield Ombudsperson must be appointed.⁵⁷

⁴⁷ John Hendel, Li Ahou, & Ashley Gold, *White House nominates 4 to FTC*, Politico (Jan. 25, 2018), <https://www.politico.com/story/2018/01/25/trump-federal-trade-commission-seats-369456>.

⁴⁸ *Id.*

⁴⁹ Harper Neidig, *Trump nominates four potential FTC commissioners*, Hill (Jan. 25, 2018), <http://thehill.com/policy/technology/370783-trump-nominates-full-slate-of-ftc-commissioners>.

⁵⁰ *Id.*

⁵¹ *Id.*

⁵² *Id.*

⁵³ Comments of EPIC to the Fed. Trade Comm'n on Draft Strategic Plan for Fiscal Years 2018 to 2022 (Dec. 5, 2017), <https://epic.org/privacy/ftc/EPIC-Comments-FTC-Draft-Strategic-Plan-12-05-17.pdf>.

⁵⁴ *See, e.g.*, Article 29 Working Party, EU – U.S. Privacy Shield – First annual Joint Review (2017), http://ec.europa.eu/newsroom/just/document.cfm?doc_id=48782.

⁵⁵ *Privacy Shield Ombudsperson*, State.gov, <https://www.state.gov/e/privacyshield/ombud/>.

⁵⁶ Letter from EPIC to John Culberson, Chairman Hosue Comm. on Appropriations, Jose Serrano, Ranking Member (Mar. 20, 2018), <https://epic.org/testimony/congress/EPIC-HAC-Commerce-Mar2018.pdf>.

⁵⁷ *Id.*

Presidential Election Commission Disbands

The Presidential Advisory Commission on Election Integrity, which unlawfully sought to collect state voter data on hundreds of millions of Americans, was disbanded on January 3, 2018 by President Donald Trump.⁵⁸ The Commission had faced an ongoing lawsuit by EPIC (*EPIC v. Commission*) over its failure to conduct and publish a Privacy Impact Assessment before collecting personal data, as required by law.⁵⁹ EPIC's lawsuit led the Commission to suspend the collection of voter data last year, discontinue the use of an unsafe computer server, and delete voter information that was unlawfully obtained. Many states and over 150 members of Congress opposed the Commission's efforts to collect state voter data.⁶⁰ In a statement, the President said that he had asked the Department of Homeland Security "to determine next courses of action."

Following the disbanding, EPIC and ten civil rights and government oversight organizations sent a letter to DHS Secretary Nielsen, urging her not to accept any personal data from the defunct Commission.⁶¹ The groups explained that the Commission lacks legal authority to transfer personal data to the Commission. The groups also warned that the DHS would be subject to numerous federal laws if it were to acquire state voter data. As the result of a Freedom of Information Act request, EPIC also obtained documents that the Election Assistance Commission, the Presidential Election Commission, the Department of Justice, and the Department of Homeland Security explored ways to cooperate on "cleaning" and "maintenance" of state voter registration databases.⁶²

III. U.S. Supreme Court & Federal Courts

International Privacy: *United States v. Microsoft*

On February 27, 2018, the Supreme Court heard arguments in *United States v. Microsoft*, a case concerning law enforcement access to communications content stored in Ireland.⁶³ The Court appeared divided during the argument, but both Justice Ginsburg and Justice Alito appeared to agree that Congress and not the Court was better positioned to find a solution. A

⁵⁸ White House, *Statement by the Press Secretary on the Presidential Advisory Commission on Election Integrity*, Whitehouse.gov (Jan. 3, 2018),

<https://www.whitehouse.gov/briefings-statements/statement-press-secretary-presidential-advisory-commission-election-integrity/>.

⁵⁹ EPIC, *EPIC v. Presidential Election Commission*, Epic.org, <https://epic.org/privacy/litigation/voter/epic-v-commission/>.

⁶⁰ EPIC, *Protect Voter Data – 51 Reasons to End the Collecton of State Voter Records by the Presidential Election Commission*, Epic.org, <https://epic.org/voter-data/>.

⁶¹ Letter from EPIC to Kirstjen M. Nielsen, Sec'y of Homeland Sec., <https://epic.org/privacy/litigation/voter/epic-v-commission/DHS-Nielsen-Letter-re-Commission-Data.pdf>.

⁶² EPIC, *Voting Privacy*, epic.org, <https://epic.org/privacy/voting/#EPICfoia2018/>.

⁶³ EPIC, *United States v. Microsoft*, Epic.org, <https://epic.org/amicus/ecpa/microsoft/>.

decision in the case was expected Summer of 2018. As noted above, the DOJ has moved to dismiss the case following the passage of the CLOUD Act, and in an *amicus brief* in the case EPIC urged the Supreme Court to respect international privacy standards⁶⁴

Automobile Searches: *Byrd v. United States*

In January 2018, the Supreme Court heard arguments in *Byrd v. United States* concerning the warrantless search of a rental vehicle.⁶⁵ The Court will decide whether a person driving a rental car loses their expectation of privacy in the vehicle solely because they are not the official driver on the rental agreement. EPIC filed an amicus brief in the case urging the Supreme Court to recognize that a modern car collects vast troves of personal data.⁶⁶ EPIC explained cars today "make little distinction between driver and occupant, those on a rental agreement and those who are not." EPIC pointed to the routine collection of cell phone contents with a Bluetooth connection, data which is stored in the car even after "deletion." EPIC also emphasized that the status of the driver has no bearing on Fourth Amendment privacy interests.

Communications Privacy: *Dahda v. United States*

In February 2018, the Supreme Court heard arguments in *Dahda v. United States*, a case concerning the federal Wiretap Act and the suppression of evidence obtained following an invalid wiretap order.⁶⁷ The Wiretap Act requires exclusion of evidence obtained as a result of an invalid order but a lower court denied suppression in the case even though the order was unlawfully broad. EPIC submitted an *amicus* brief in the case, writing "it is not for the courts to create atextual exceptions" to federal privacy laws."⁶⁸ EPIC explained that Congress enacted broad and unambiguous privacy provisions in the Wiretap Act. "If the government wishes a different outcome," EPIC wrote, "then it should go to Congress to revise the statute."

Location Privacy: *Carpenter v. United States*

In December 2018, the U.S. Supreme Court has heard oral arguments in *Carpenter v. United States*, a case concerning the privacy of cell phone location data. A decision in the case is expected Summer 2018. The case asks whether the warrantless search and seizure of historical cell-phone records revealing the location and movements of a cell-phone user is permitted under the Fourth Amendment. A lower court ruled that the Fourth Amendment does not require officers to get a warrant before they obtain location records from a cell phone provider.⁶⁹ EPIC,

⁶⁴ Brief for EPIC and Thirty-Seven Technical Experts and Legal Scholars as Amici Curiae in Support of Respondent, *supra* note 6.

⁶⁵ EPIC, *Byrd v. United States*, Epic.org, <https://epic.org/amicus/fourth-amendment/byrd/>.

⁶⁶ Brief for EPIC and Twenty-Three Technical Experts and Legal Scholars as Amici Curiae in Support of Petitioner, *Byrd v. United States*, No. 16-1371 (Nov. 20, 2017), <https://epic.org/amicus/fourth-amendment/byrd/Byrd-v-US-EPIC-Amicus-Brief.pdf>.

⁶⁷ EPIC, *Dahda v. United States*, Epic.org, <https://epic.org/amicus/wiretap/dahda/>.

⁶⁸ Brief for EPIC as Amici Curiae in Support of Petitioner, *Dahda. United States*, No. 17-43 (Dec. 7, 2017), <https://epic.org/amicus/wiretap/dahda/Dahda-v-US-EPIC-Amicus.pdf>.

⁶⁹ U.S. v. Carpenter, 819 F.3d 880 (6th Cir. 2016).

along with thirty-six technical experts and legal scholars, filed an amicus brief supporting the application of the warrant standard to obtain location data and recommending that the Court extend Constitutional protection to cell phone data.⁷⁰

Informational Privacy Case Before Federal Court of Appeals

The influential D.C. federal court of appeals, the D.C. Circuit, is scheduled to hear a key case involving informational privacy in Summer 2018.⁷¹ *In re OPM Data Security Breach Litigation* involved a pair of data breaches of the U.S. Office of Personnel Management in 2015 that affected 22 million federal employees, their friends, and family members. The case asks whether the government's failure to safeguard sensitive personal data from a breach, and the resulting disclosure of that personal data, violated individuals' constitutional right to informational privacy and represents an injury entitled to federal court review.

EPIC has informed the Court that it will file an amicus brief in May 2018.⁷² EPIC has long warned that federal agencies collect far too much personal data that they fail to protect. In the 2012 case *NASA v. Nelson*, concerning repeated data breaches at the space agency, EPIC urged the Supreme Court to recognize a right to "informational privacy" that would limit data collection by federal agencies.⁷³

II. Pending Legislation

Several privacy bills have been introduced in Congress, though it remains unclear whether these legislative proposals will move forward.

Credit Reporting Agency Accountability

Senators have introduced legislation to hold credit reporting agencies accountable for data breaches. The Data Breach Prevention and Compensation Act establishes an office of cybersecurity within the FTC to give it direct supervisory authority over the credit reporting industry and imposes mandatory penalties for breaches involving consumer data at credit reporting agencies.⁷⁴ The bill is a direct response to the Equifax data breach last year that exposed the sensitive personal information of over 145 million Americans.⁷⁵ EPIC testified

⁷⁰ Brief for EPIC and Thirty-Six Technical Experts and Legal Scholars as Amici Curiae in Support of Petitioner, *Carpenter v. United States*, No. 16-402 (Aug. 14, 2017) <https://epic.org/amicus/location/carpenter/Carpenter-v-US-amicus-EPIC.pdf>.

⁷¹ EPIC, *In re OPM Data Security Breach Litigation*, Epic.org, <https://epic.org/amicus/opm/>.

⁷² Notice by EPIC of Intent to File Brief as Amici Curiae in Support of Plaintiff-Appellants, *In re OPM Data Security Breach Litigation*, No. 17-5217 (D.C. Cir. Mar. 14, 2018). <https://epic.org/amicus/opm/OPM-EPIC-Notice-of-Intent.pdf>.

⁷³ EPIC, *NASA v. Nelson*, Epic.org, <https://epic.org/amicus/nasavnelson/>.

⁷⁴S. 2289, 115th Cong. (2018).

⁷⁵ EPIC, *143 Million US Consumers Suffer Massive Data Breach, Equifax at Fault*, Epic.org (Sept. 8, 2017),

before Congress last year following the Equifax breach, urging legislation to give consumers more control over their credit reports.⁷⁶

Artificial Intelligence Oversight

Senators have introduced legislation to establish new oversight committees for the use of AI. The Future of Artificial Intelligence Act of 2017 would establish an AI committee at the Commerce Department.⁷⁷ A companion bill has been introduced in the House. A second proposal in the House would create a National Security Commission on Artificial Intelligence to conduct a comprehensive assessment of the risks to national security, identity actionable items, and provide recommendations to the President and Congress.⁷⁸ The Commission's recommendations would also address: data and privacy, international law and ethics, competitiveness, technological advantages, cooperation and competition, investments and research, and workforce and education. In 2015, EPIC launched an international campaign in support of Algorithmic Transparency⁷⁹ and has warned Congress about the use of opaque technique in automated decision-making.⁸⁰

Consumer Data Protection

Two bills to safeguard consumer data have been introduced in the House of Representatives: The Protecting Consumer Information Act of 2018⁸¹ and the Ending Forced Arbitration for Victims of Data Breaches Act.⁸² The first bill will expand the Federal Trade Commission's enforcement authority over credit reporting agencies, while allowing state attorneys general to also bring enforcement actions. The second bill will prohibit entities from enforcing mandatory arbitrary clauses—which prohibit consumers from filing lawsuits—in data breach cases. EPIC President Marc Rotenberg recently testified before Congress to call for comprehensive privacy legislation and the creation of a federal data protection agency.⁸³

<https://epic.org/2017/09/143-million-us-consumers-suffe.html>.

⁷⁶ *Consumer Data Security and the Credit Bureaus: Hearing before the S. Comm. on Banking, Housing, and Urban Affairs*, 115th Con. (2018) (written testimony of Marc Rotenberg, EPIC President).

⁷⁷ H.R. 2625, 115th Cong. (2018).

⁷⁸ H.R. 5356, 115th Cong. (2018).

⁷⁹ EPIC, *Algorithmic Transparency: End Secret Profiling*, Epic.org, <https://epic.org/algorithmic-transparency/>.

⁸⁰ EPIC, *EPIC Urges Congress to Regulate AI techniques, Promotes 'Algorithmic Transparency'*, Epic.org, <https://epic.org/2017/12/epic-urges-congress-to-regulat.html>.

⁸¹ H.R. 5166, 115th Cong. (2018).

⁸² H.R. 5165, 115th Cong. (2018).

⁸³ *Examining the Current Data Security and Breach Notification Regulatory Regime: Hearing before the H. Comm. on Banking, Housing, and Urban Affairs*, 115th Con. (2018) (written testimony of Marc Rotenberg, EPIC President).

Limiting Device Searches at the Border

Senators have introduced a bill restricting searches and seizures of electronic devices at the border.⁸⁴ The bill sets out detailed procedures for seizing electronic devices, including a warrant requirement prior to inspection of the device, data minimization, and exclusion of evidence that is obtained in violation of the Act. The bill also establishes reporting requirements to determine the scope and frequency of device searches. The bill would also require a warrant to use software to analyze seized electronic devices. In a statement to Congress last year, EPIC warned that enhanced surveillance at the border will impact citizens' rights.⁸⁵

III. Other U.S. Privacy Developments

State Department to Require Social Media IDs of Visa Applicants

In a Federal Register notice released today, the State Department is proposing that all visa applicants submit social media identifiers to the federal government.⁸⁶ EPIC previously opposed the agency's plan, warning that "this proposal leaves the door open for abuse, mission creep, and the disproportionate targeting of Muslim and Arab Americans."⁸⁷ Earlier this year, EPIC and a broad coalition of civil rights organizations submitted a Freedom of Information Act request seeking details of the Trump Administration's "extreme vetting" initiative, including the collection and use of social media information.⁸⁸

⁸⁴ S. 2462, 115th Cong. (2018).

⁸⁵ Letter from EPIC to Ron DeSantis, Chairman House Comm. on Oversight and Gov't Reform, and Stephen Lynch, Ranking Member (April 26, 2017),

<https://epic.org/testimony/congress/EPIC-HCOGR-BorderWall-Apr2017.pdf>.

⁸⁶ Public Notice 10261, 83 Fed. Reg. 13806 (Mar. 30, 2018),

<https://www.gpo.gov/fdsys/pkg/FR-2018-03-30/pdf/2018-06490.pdf>.

⁸⁷ Comments of EPIC to the Dep't of State on Supplemental Questions for Visa Applicants (Dec. 27, 2017), <https://epic.org/EPIC-DOS-Visas-SocialMediaID-Dec2017.pdf>.

⁸⁸ Letter from Coalition of Civil Rights Organizations to Department of Homeland Security, et. al, <https://www.muslimadvocates.org/files/Extreme-Vetting-Initiative-FOIA-Request.pdf>.

2020 U.S. Census to Include New Citizenship Question

The Department of Commerce has announced that the 2020 census will include a question on citizenship status.⁸⁹ The decennial census has not included a citizenship question since 1950. Critics argue that the question will result in unreliable data collection and skew census results.⁹⁰ In response, a bill was introduced to prohibit the census from including a citizenship question.⁹¹ EPIC submitted a Freedom of Information Act request seeking documents on the Department's decision to adopt the new census question.⁹² The census raises significant privacy risks, including re-identification, marketing solicitations, and even more serious consequences of political abuse.⁹³

Report: Data Breaches Continue to Rise

2017 marked the "worst year ever" for data breaches, according to a pair of reports by Thales⁹⁴ and the Online Trust Alliance.⁹⁵ Data breaches nearly doubled from 2016 to 2017, and 73% of all U.S. companies have now been breached. Noteworthy were the data security failures of Equifax and Uber. In testimony before the Senate Banking Committee following the Equifax breach last year, EPIC called on Congress to enact meaningful reforms, including default credit freezes and prompt data breach notification.⁹⁶

FTC Takes Action on Connected Toys, Settles with Company that Violated Children's Privacy Law

The Federal Trade Commission announced a settlement with VTech Electronics over charges that the company collected personal information from children without parental consent and failed to provide data security.⁹⁷ In 2015, Senators inquired about VTech's privacy practices

⁸⁹ Press Release, U.S. Department of Commerce Announces Reinstatement of Citizenship Question to the 2020 Decennial Census (Mar. 26, 2018), <https://www.commerce.gov/news/press-releases/2018/03/us-department-commerce-announces-reinstatement-citizenship-question-2020>.

⁹⁰ Emily Baumgaertner, *Despite Concerns, Census Will Ask Respondents if They Are U.S. Citizens*, N.Y. Times (Mar. 26, 2018), <https://www.nytimes.com/2018/03/26/us/politics/census-citizenship-question-trump.html>.

⁹¹ S. 2580, 115th Cong. (2018).

⁹² EPIC, *EPIC FOIAs Commerce Department about Citizenship Question on 2020 Census*, Epic.org (Mar. 22, 2018), <https://epic.org/2018/03/epic-foias-commerce-department.html>.

⁹³ EPIC, *The Census and Privacy*, Epic.org, <https://epic.org/privacy/census/>.

⁹⁴ Thales, *Thales Data Threat Report* (2018), <https://dtr.thalessecurity.com>.

⁹⁵ OTA, *Cyber Incident & breach Trends Report* (2018), https://www.otalliance.org/system/files/files/initiative/documents/ota_cyber_incident_trends_report_jan2018.pdf.

⁹⁶ *Consumer Data Security and the Credit Bureaus: Hearing before the S. Comm. on Banking, Housing, and Urban Affairs*, 115th Con. (2018) (written testimony of Marc Rotenberg, EPIC President).

⁹⁷ Press Release, Fed. Trade Comm'n, *Electronic Toy Maker VTech Settles FTC Allegations That it Violated Children's Privacy Law and the FTC Act* (Jan. 8, 2018),

after the toy company was hacked, exposing the personal information of millions of children.⁹⁸ The Children's Online Privacy Act (COPPA) sets forth strict requirements for the collection of information from children.⁹⁹ EPIC and a coalition of consumer organizations recently campaigned to the FTC to take action on toys that spy.¹⁰⁰

SEC Issues Cybersecurity Guidance

The Securities and Exchange Commission has released guidance for cybersecurity risks and incidents.¹⁰¹ The SEC stated that "in light of the increasing significance of cybersecurity incidents," it is "critical" for companies to routinely report cybersecurity threats. The Commission also emphasized that corporate officers must not trade on nonpublic information. Equifax waited six weeks to notify the public of its data breach, and its executives were accused of insider trading after it was revealed that they sold Equifax stock prior to informing the public of the breach.¹⁰² EPIC has long advocated for mandatory breach notification.¹⁰³

Federal Student Aid Office not Protecting Student Privacy, GAO Audit Finds

The Federal Student Aid office (FSA) at the Department of Education is not doing enough to protect student privacy, according to an audit by the Government Accountability Office.¹⁰⁴ The GAO found that FSA has failed to hold schools accountable for their lax data security practices that have resulted in numerous data breaches and has not assessed the privacy risks for its own electronic records system. FSA collects personal information on students and their families to evaluate schools that receive federal student aid. EPIC urged Congress to

<https://www.ftc.gov/news-events/press-releases/2018/01/electronic-toy-maker-vtech-settles-ftc-allegations-it-violated>.

⁹⁸ EPIC, *Markey and Barton Pursue VTech Data Breach*, Epic.org (Dec. 2, 2015), <https://epic.org/2015/12/markey-and-barton-pursue-vtech.html>.

⁹⁹ EPIC, *Children's Online Privacy Protection Act (COPPA)*, Epic.org, <https://epic.org/privacy/kids/>.

¹⁰⁰ Press Release, Consumer and Privacy Groups Demand Action on Toys that Spy on Children (Dec. 18, 2017), <http://www.commercialfreechildhood.org/consumer-and-privacy-groups-demand-action-toys-spy-children>.

¹⁰¹ Sec. and Exchange Comm'n, Commission Statement and Guidance on Public Company Cybersecurity Disclosures (Feb. 21, 2018), <https://www.sec.gov/rules/interp/2018/33-10459.pdf>.

¹⁰² Tara Siegel Bernard, *Senators Seek Answers on Equifax Breach, Including Details on Stock Sales*, N.Y. Times (Sept. 11, 2017), <https://www.nytimes.com/2017/09/11/business/equifax-breach-stock-sale.html>.

¹⁰³ Letter from EPIC to Bob Latta, Chairman, House Comm. on Energy and Commerce, Jan Schakowsky, Ranking Member (Oct. 2, 2017), <https://epic.org/testimony/congress/EPIC-HEC-EquifaxBreach-Oct2017.pdf>.

¹⁰⁴ Gov't Accountability Office, *Better Program Management and Oversight of Postsecondary Schools Needed to Protect Student Information* (2017), https://www.gao.gov/products/GAO-18-121?utm_medium=email&utm_source=govdelivery.

strengthen student privacy protections following a FAFSA data breach¹⁰⁵ and has proposed a Student Privacy Bill of Rights.¹⁰⁶

FTC Says Identity Theft Complaints Rank High

Identity theft ranked second among all complaints submitted to the Federal Trade Commission in 2017.¹⁰⁷ Although the total number of complaints dropped, consumers reported losing \$63 million more to identity theft and fraud in 2017 than in 2016. EPIC has warned that "the FTC's failure to act against the growing threats to consumer privacy and security could be catastrophic."¹⁰⁸ EPIC urged the FTC to enforce data security standards as part of its 10 Recommendations for the FTC's five-year strategic plan.¹⁰⁹

Axios Poll: Public Wants Big Tech Regulated

A new Axios-SurveyMonkey poll found that 55% of Americans believe the government should do more to regulate tech companies such as Google and Facebook.¹¹⁰ The poll showed bipartisan support for increased regulation, with 45% of Republicans, 64% of Democrats, and 57% of Independents saying they are "more concerned" that the government will not go far enough to regulate tech. EPIC maintains an extensive page on Privacy and Public Opinion which shows consistent support among Americans for stronger laws to protect their privacy.¹¹¹

FTC Finalizes Settlement with Lenovo Over Adware

The Federal Trade Commission has given final approval to a settlement with Lenovo over its practice of pre-installing adware onto consumers' laptops.¹¹² The complaint alleged that the adware transmitted consumers' personal information to third parties and made consumer'

¹⁰⁵ Letter from EPIC to Jason Chaffetz, Chairman, House Comm. on Oversight and Gov't Reform, Elijah Cummings, Ranking Member (May 2, 2017), <https://epic.org/testimony/congress/EPIC-HCOGR-FAFSADataBreach-May2017.pdf>.

¹⁰⁶ Valerie Strauss, *Why a 'Student Privacy bill of Rights' is Desperately needed*, Wash. Post (Mar. 6, 2014), https://www.washingtonpost.com/news/answer-sheet/wp/2014/03/06/why-a-student-privacy-bill-of-rights-is-desperately-needed/?utm_term=.49515282e410.

¹⁰⁷ Press Release, FTC Releases Annual Summary of Complaints Reported by Consumers (Mar. 1, 2018), <https://www.ftc.gov/news-events/press-releases/2018/03/ftc-releases-annual-summary-complaints-reported-consumers>.

¹⁰⁸ Letter from EPIC to Jerry Moran, Chairman, Senate Commerce Comm., Richard Blumenthal, Ranking Member (May 2, 2017), <https://epic.org/testimony/congress/EPIC-SCOM-FTCStakeholder-Sept2017.pdf>.

¹⁰⁹ Comments of EPIC to the Fed. Trade Comm'n on Draft Strategic Plan for Fiscal Years 2018 to 2022, *supra* note 53.

¹¹⁰ Axios, Exclusive: Public wants Big Tech regulated (2018), <https://www.axios.com/axios-surveymonkey-public-wants-big-tech-regulated-5f60af4b-4faa-4f45-bc45-018c5d2b360f.html>.

¹¹¹ EPIC, *Public Opinion on Privacy*, Epic.org, <https://epic.org/privacy/survey/>.

¹¹² Complaint, Lenovo, Inc., No. C-4636 (F.T.C. Dec. 20, 2017).

laptops vulnerable to cyberattacks.¹¹³ The settlement prohibits Lenovo from misrepresenting any pre-installed software but imposes no fines and allows Lenovo to continue pre-installing adware onto consumers' laptops. EPIC has routinely urged the FTC to strengthen its privacy settlements.¹¹⁴

IV. EPIC's Work

EPIC Champions of Freedom Awards Dinner

EPIC will host the 2018 Champions of Freedom Award dinner and ceremony on June 6, 2018 at the National Press Club in Washington, D.C. More information is available here: <https://epic.org/june6/>. In January, EPIC also presented the 2018 International Privacy Champion Award to Gus Hosein, director of Privacy International, and Professor Artemi Rallo, the former chair of the Spanish Data Protection Agency.

EPIC Files Freedom of Information Act Lawsuits on Voter Privacy, Drones, and President Trump's Tax Returns

EPIC has filed Freedom of Information Act lawsuits on issues of voter privacy, drones, and disclosure of the President's tax returns.¹¹⁵ In a first lawsuit against the Department of Homeland Security, EPIC seeks the release of communications between the agency and the Presidential Commission on Elections regarding the transfer of personal voter data. A second lawsuit against DHS concerns public release of information about the use of drones for domestic surveillance.¹¹⁶ And, in *EPIC v. IRS*, seeking disclosure of President Trump's tax returns, EPIC has filed an opening brief in D.C. Circuit explaining the IRS has the authority to disclose the President's returns.¹¹⁷

EPIC Joins Consumer and Health Groups, Urges Facebook to Scrap 'Messenger Kids'

EPIC, the Center for Commercial Free Childhood, and others have urged Mark Zuckerberg to shutter Facebook's "Messenger Kids" app.¹¹⁸ The groups cited rising concern

¹¹³ Decision and Order, *Lenovo, Inc.*, No. C-4636 (F.T.C. Dec. 20, 2017).

¹¹⁴ See, e.g., EPIC, *EPIC Urges FTC To Strengthen Privacy Settlement With Uber*, Epic.org (Sept. 15, 2017), <https://epic.org/2017/09/epic-urges-ftc-to-strengthen-p.html>.

¹¹⁵ EPIC, *EPIC Sues DHS about Election Commission and Transfer of Voter Data*, Epic.org (Jan. 9, 2018), <https://epic.org/2018/01/epic-sues-dhs-about-election-c.html>.

¹¹⁶ EPIC, *EPIC FOIA: EPIC Sues DHS for Drone Reports*, Epic.org (Mar. 9, 2018), <https://epic.org/2018/03/epic-foia-epic-sues-dhs-for-dr-1.html>.

¹¹⁷ EPIC, *EPIC v. IRS: EPIC Urges D.C. Circuit to Green-Light Release of President Trump's Tax Returns*, Epic.org (Dec. 22, 2018), <https://epic.org/2018/02/epic-v-irs-epic-urges-dc-circu.html>.

¹¹⁸ Letter from EPIC, et. al, to Mark Zuckerberg, CEO Facebook (Jan. 30, 2018), <http://www.commercialfreechildhood.org/sites/default/files/develop/gaw/FBMessengerKids.pdf>.

about social media among adolescents and wrote it is irresponsible to encourage preschoolers to use Facebook products. Senators previously wrote to Facebook, questioning the Company about the Messenger Kids app, aimed at children 6-12.¹¹⁹ The Senators said, “we remain concerned about where sensitive information collected through this app could end up and for what purpose it could be used.” EPIC also recently backed a campaign that led Mattel to cancel its plans to sell a device that collects and stores data from young children.¹²⁰

EPIC Offers 10 Recommendations for the FTC's Five-Year Strategic Plan

EPIC has submitted 10 recommendations for the Federal Trade Commission's "Draft Strategic Plan" for 2018-2022.¹²¹ EPIC explained how the FTC can protect consumers, promote competition, and encourage innovation. Among the several proposals, EPIC urged the FTC to enforce consent orders, incorporate public comments into settlements, promote transparency, produce concrete outcomes, and endorse data protection legislation.

EPIC Names New Advisory Board Members

EPIC has announced the newest members of the EPIC Advisory Board. They are: Professor Woodrow Hartzog is Professor of Law and Computer Science at Northeastern University School of Law and the College of Computer and Information Science. Dr. Rush D. Holt is a former member of Congress, Chief Executive Officer of the American Association for the Advancement of Science (AAAS), and Executive Publisher of the Science family of journals, Len Kennedy was the first general counsel of the Consumer Financial Protection Bureau and is the Senior Advisor at Neustar. Roger McNamee is the Co-founder of Elevation Partners, a musician, an early investor in Facebook, and now one of the leading voices calling for reform of the Internet industry. The EPIC Advisory Board is a distinguished group of experts in law, technology, and public policy who contribute to EPIC’s work on privacy and civil liberties.

¹¹⁹ Letter from Edward Markey, Senator, and Richard Blumentahl, Senator, to Mark Zuckerberg, CEO Facebook (Dec. 6, 2017), <https://www.markey.senate.gov/imo/media/doc/Facebook%20Messenger%20Kids%20letter%2012.06.17.pdf>.

¹²⁰ Commercial Free Childhood, Don't let Mattel's new "digital nanny" trade children's privacy for profit (2017), <http://www.commercialfreechildhood.org/action/dont-let-mattels-new-digital-nanny-trade-childrens-privacy-profit#expert>.

¹²¹ Comments of EPIC to the Fed. Trade Comm’n, *supra* note 53.

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Books

EPIC Bookstore – with many books by members of the EPIC Advisory Board and other featured authors – www.epic.org/bookstore

The Right to Be Forgotten on the Internet: Google v. Spain, Artemi Rallo (EPIC 2018)

Privacy Law Sourcebook 2016: United States Law, International Law, and Recent Developments (Kindle Edition), edited by Marc Rotenberg (EPIC 2016)

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