



**International Working Group on Data Protection in Telecommunications
64th Meeting
Queenstown, New Zealand – 28 November 2018**

**Country Report
United States of America
(provided by EPIC)**

I. Major U.S. Privacy Developments

NTIA Seeks Comments on ‘Desired Outcomes’ Framework for Privacy Protection

The National Telecommunications and Information Administration—the agency that advises the White House on telecommunications and information policy—released a proposed framework for consumer privacy and sought feedback from the public.¹ The NTIA framework outlines seven "desired outcomes" for the processing of personal data: (1) transparency, (2) control, (3) minimization, (4) security, (5) access and correction, (6) risk management, and (7) accountability. The NTIA framework is similar to many Fair Information Practices framework, such as the OECD Privacy Guidelines, but does not outline a strategy for implementation and enforcement. Today the United States experiences unprecedented levels of identity theft, financial fraud, and data breaches.

In comments to the agency EPIC backed the “desired outcomes.”² But EPIC urged the agency to support federal baseline legislation, the creation of a data protection agency, and the ratification of the modernized Council of Europe Convention on Privacy.³ EPIC explained, "These are not policy preferences or partisan perspectives. These are the steps that modern societies must take to safeguard the personal data of their citizens."

Facebook-Cambridge Analytica: FTC Continued Failure to Enforce Consent Order

The Federal Trade Commission has continued to fail to bring an enforcement action against Facebook for the disclosure of the personal data of 50 million users to Cambridge Analytica, the controversial British data mining firm that sought to influence the 2016 presidential election.⁴ The unlawful disclosure of user records to the data mining firm violated the 2011 FTC Consent Order against Facebook that resulted from a sustained campaign by US privacy organizations.⁵ As a result, EPIC and consumer organizations called on the FTC to

¹ NTIA, U.S. Dep’t. Commerce, *Developing the Administration’s Approach to Consumer Privacy, Request for Comments*, Docket No. 180821780-8780-01 (Oct. 11, 2018), <https://www.federalregister.gov/documents/2018/09/26/2018-20941/developing-the-administrationsapproach-to-consumer-privacy>.

² Comments of EPIC to the NTIA on Developing the Administration’s Approach to Consumer Privacy (Nov. 9, 2018), <https://epic.org/apa/comments/EPIC-NTIA-Nov2018.pdf>.

³ EPIC, *Council of Europe Privacy Convention*, Epic.org, <https://epic.org/privacy/intl/coeconvention/>.

⁴ 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>.

⁵ 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 from EPIC to Acting FTC Chair Maureen Ohlhausen (Feb. 15, 2017) (“1. The FTC Must

“immediately undertake an investigation and issue a public report as to whether Facebook complied with the 2011 Order.”⁶

In March 2018, after the Cambridge Analytica scandal became public, the FTC announced it would reopen the investigation of Facebook.⁷ In a press release, the FTC stated that “[c]ompanies who have settled previous FTC actions must also comply with FTC order provisions imposing privacy and data security requirements. Accordingly, the FTC takes very seriously recent press reports raising substantial concerns about the privacy practices of Facebook.”⁸

However, eight months have passed since the FTC’s announcement of the investigation, but the FTC has not issued a judgment, report, or public statement. EPIC and a coalition of consumer groups have written to the FTC, urging the Commission to conclude its investigation.⁹

FTC Launches New Inquiry on “Competition and Consumer Protection in the 21st Century

The FTC is holding a series of public hearings this fall on how to safeguard consumer protection and competition in light of economic and technologic developments. This is the first time the FTC has re-examined its approach to consumer protection and competition since 1995 FTC hearings on “Global Competition and Innovation.”

“The hearings may identify areas for enforcement and policy guidance, including improvements to the agency’s investigation and law enforcement processes, as well as areas that warrant additional study,” said the FTC.¹⁰ The hearings focus on multiple topics, including “the intersection between privacy, big data, and competition” and “the use of algorithmic decision tools, artificial intelligence, and predictive analytics.” The FTC requested public comment in advance of the hearings.

Enforce Existing Consent Orders”), <https://epic.org/privacy/internet/ftc/EPIC-et-al-ltr-FTC-02-15-2017.pdf>.

⁶ Letter from EPIC, et. al, to Acting FTC Chair Maureen Ohlhausen & Commissioner Terrell McSweeney (Mar. 20, 2018), <https://epic.org/privacy/facebook/EPIC-et-al-ltr-FTC-Cambridge-FB-03-20-18.pdf>.

⁷ 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>.

⁸ *Id.*

⁹ Letter from EPIC, et. al, to FTC Chair Joseph Simons, et. al (Aug. 16, 2018), <http://epic.org/privacy/ftc/facebook/EPIC-Letter-to-FTC-re-Facebook-Investigation.pdf>

¹⁰ Press Release, FTC Announces Hearings On Competition and Consumer Protection in the 21st Century (June 20, 2018), https://www.ftc.gov/news-events/press-releases/2018/06/ftc-announces-hearings-competition-consumer-protection-21st?utm_source=govdelivery.

EPIC and a coalition of consumer groups submitted extensive comments for the hearings.¹¹ EPIC and the groups said that privacy protection is critical for competition and innovation. EPIC and the groups told the FTC that it should: 1) unwind the Facebook-WhatsApp deal; 2) require Facebook and Google to spin off their advertising units; 3) block future acquisitions by Facebook and Google that would extend monopoly control over consumer data; 4) impose privacy safeguards for all mergers that implicate data privacy; and 5) perform audits of algorithmic tools to promote accountability and to limit anticompetitive conduct.

Three Privacy and Civil Liberties Oversight Board Members Confirmed

The Senate has confirmed three Privacy and Civil Liberties Oversight Board Members. The Privacy and Civil Liberties Oversight Board provides oversight and advice over executive branch intelligence activities.¹² Following on Adam Klein's nomination in Summer 2017, the administration nominated Ed Felten and Jane Nitze in March 2018.¹³ 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. All three nominees have now been confirmed.

The three confirmations establish a quorum for the long dormant agency but still leaves two nominees pending. Travis LeBlanc, a partner at Boies Schiller and former Federal Communications Commission Enforcement Bureau Chief, and Aditya Bamza, a law professor at the University of Virginia and former Department of Justice attorney, were both announced as nominees by President Trump in August.¹⁴

EPIC and a coalition of privacy and civil liberties organizations have called for the Senate to fill the remaining, vacant PCLOB seats.¹⁵ EPIC previously testified before PCLOB and set out a broad agenda for the work of the independent agency.¹⁶

¹¹ EPIC, *EPIC, Consumer Groups Advise FTC on Competition and Privacy*, Epic.org (Aug. 20, 2018), <https://epic.org/2018/08/epic-consumer-groups-advise-ft.html>.

¹² PCLOB, *History and Mission*, Pclob.gov, <https://www.pclob.gov/about/>.

¹³ 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/>.

¹⁴ EPIC, *Two More Nominees for Intelligence Oversight Board*, Epic.org (Aug. 13, 2018), <https://epic.org/2018/08/two-more-nominees-for-intellig.html>.

¹⁵ Letter from EPIC, et. al, to Chuck Grassley, Chairman, Judiciary Committee, and Diane Feinstein, Ranking-Member (Aug. 29, 2018), https://newamericadotorg.s3.amazonaws.com/documents/NGO_PCLOB_letter_8-29-18.pdf.

¹⁶ Marc Rotenberg, *Prepared Statement for the Record, Workshop on "Domestic Surveillance Programs Operated Under the USA PATRIOT Act and the Foreign Intelligence Surveillance Act" Before the Privacy and Civil Liberties Oversight Board*, Epic.org (July 9, 2013), <https://epic.org/privacy/oversight/EPIC-PCLOB-Statement.pdf>; Statement of EPIC to the Privacy and Civil Liberties Oversight Board on "Sunshine Act; Notice of Meeting" (Oct. 23, 2012).

Privacy Shield Ombudsperson Still Un-Appointed

The U.S. has not appointed a Privacy Shield Ombudsperson, a critical post under the EU-U.S. Privacy Shield.¹⁷ Acting Under Secretary of State for Economic Growth, Energy, and the Environment, Manisha Singh, serves as a Privacy Shield Ombudsperson.¹⁸ In a statement to the U.S. Congress, EPIC recommended the appointment of a Privacy Shield Ombudsperson.¹⁹ EPIC also raised concerns about the fundamental rights protections under Privacy Shield in comments for the annual review of the pact.²⁰

II. U.S. Supreme Court

Location Privacy: *Carpenter v. United States*

In a landmark ruling, the U.S. Supreme Court held that the Fourth Amendment protects location records generated by mobile phones.²¹ The government in *Carpenter v. United States* had obtained months of location records without a warrant. The decision by the Chief Justice emphasized the importance of protecting privacy as technology advances: "As technology has enhanced the Government's capacity to encroach upon areas normally guarded from inquisitive eyes, this Court has sought to 'assure[] preservation of that degree of privacy against government that existed when the Fourth Amendment was adopted.'"²² The Court held that "an individual maintains a legitimate expectation of privacy in the record of his physical movements as captured through" a cell phone.²³ Dissenting opinions were filed by Justices Kennedy, Thomas, Alito, and Gorsuch.

EPIC filed an *amicus* brief in the case, signed by thirty-six technical experts and legal scholars, which urged the Court to recognize that the "world has changed since *Smith v. Maryland*" was decided.²⁴ EPIC argued that "Cell phones are now as necessary to the life of Americans as they are ubiquitous" and that users expect their location data will remain private.

<https://epic.org/privacy/1974act/EPIC-PCLOB-Statement-10-12.pdf>.

¹⁷ 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.

¹⁸ *Privacy Shield Ombudsperson*, State.gov, <https://www.state.gov/e/privacyshield/ombud/>.

¹⁹ Letter from EPIC to John Culberson, Chairman House Comm. on Appropriations, Jose Serrano, Ranking Member (Mar. 20, 2018), <https://epic.org/testimony/congress/EPIC-HAC-Commerce-Mar2018.pdf>.

²⁰ Comments of EPIC to the European Commission (Aug. 14, 2018), https://epic.org/privacy/intl/Comments_Privacy_Shield_Review_2.pdf.

²¹ *Carpenter v. United States*, 138 U.S. 2206 (2018).

²² *Id.* at 2214.

²³ *Id.* at 2217.

²⁴ 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>.

International Privacy: *United States v. Microsoft*

The Supreme Court vacated *United States v. Microsoft* a case concerning law enforcement access to communications content stored in Ireland.²⁵ While the case was pending, the Congress quickly passed the CLOUD Act, which requires internet companies to disclose personal data to in response to U.S. legal process, no matter where that data is stored. The Court then determined that there was no longer a matter to adjudicate and ended the proceeding. In an *amicus brief* in the case EPIC urged the Supreme Court to respect international privacy standards and develop systems of cross-border access to data via international consensus.²⁶

Automobile Searches: *Byrd v. United States*

The Supreme Court ruled in *Byrd v. United States* that a driver in lawful possession of a rental car has a reasonable expectation of privacy regardless of a rental car agreement.²⁷ The Court held that, "the mere fact that a driver in lawful possession or control of a rental car is not listed on the rental agreement will not defeat his or her otherwise reasonable expectation of privacy." EPIC filed an amicus brief in the case urging the Supreme Court to recognize that a modern car collects vast troves of personal data.²⁸ 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.

III. Other U.S. Privacy Developments

California Passes Milestone Privacy Law

The State of California has enacted the California Consumer Privacy Act of 2018, one of the most comprehensive consumer privacy state laws enacted in the United States.²⁹ As passed, the Act will establish the right of residents of California to know what personal information about them is being collected; to know whether their information is sold or disclosed and to whom; to limit the sale of personal information to others; to access their information held by others; and to obtain equal service and price, even if they exercise their privacy rights. The Act will allow individuals to delete their data and it will establish opt-in consent for those under 16. The Consumer Privacy Act provides for enforcement by the Attorney General, a private right of

²⁵ *United States v. Microsoft*, 138 S.Ct. 1186 (2018).

²⁶ Brief for EPIC and Thirty-Seven Technical Experts and Legal Scholars as Amici Curiae in Support of Respondent, *supra* note 6.

²⁷ EPIC, *Byrd v. United States*, Epic.org, <https://epic.org/amicus/fourth-amendment/byrd/>.

²⁸ 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>.

²⁹ Cal. Civil Code §1798.100, et. seq.

action, and will establish a Consumer Privacy Fund to support the purposes of Act. Additional amendments to the law have been passed and are expected to continue.³⁰

The California Consumer Privacy Act of 2018 follows a California ballot initiative that gathered over 600,000 signatures. After the Equifax data breach, EPIC testified in the U.S. Senate that comprehensive privacy legislation was long overdue.³¹ The EPIC State Policy Project also provides expertise to the states to help shape strong privacy laws.³²

Federal Trade Commission Approves Settlement with Uber

The Federal Trade Commission finalized a settlement with Uber after the company failed to implement reasonable security measures and allowed employees to access customers' personal information.³³ Because of Uber's lax security practice, the company was breached twice, exposing vast amounts of sensitive information. The settlement follows on the heels of Uber's settlement with the attorneys general of all fifty states and the District of Columbia for failing to notify users of Uber's second breach in 2016.³⁴

EPIC wrote to the FTC in May, urging the Commission to strengthen its existing settlement with Uber.³⁵ The Commission responded directly to several of EPIC's suggestions, which included mandating cybersecurity and privacy requirement.

Informational Privacy Case Heard by Federal Court of Appeals

The influential D.C. federal court of appeals, the D.C. Circuit, is considering a case concerning informational privacy.³⁶ *In re OPM Data Security Breach Litigation* involved data breaches at 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.

³⁰ See, e.g., S. 1121, 2017-2018 Sess. (Ca. 2018) (enacted).

³¹ Marc Rotenberg, *Testimony and Statement for the Record Hearing on Consumer Data Security and the Credit Bureaus Before the Committee on Banking, Housing, and Urban Affairs United States Senate*, Epic.org (Oct. 17, 2017), <https://epic.org/privacy/testimony/EPIC-Testimony-SBC-10-17.pdf>.

³² EPIC, State Policy Project, Epic.org, <https://epic.org/state-policy/>.

³³ Press Release, Federal Trade Commission Gives Final Approval to Settlement with Uber (Oct. 26, 2018), <https://www.ftc.gov/news-events/press-releases/2018/10/federal-trade-commission-gives-final-approval-settlement-uber>.

³⁴ EPIC, *Following Lax FTC Action, State AGs Fine Uber \$148 Million in Data Breach Case*, Epic.org (Sept. 26, 2018), <https://epic.org/2018/09/following-lax-ftc-action-state.html>.

³⁵ EPIC, *EPIC Urges FTC To Strengthen Revised Settlement with Uber*, Epic.org (May 15, 2018), <https://epic.org/2018/05/epic-urges-ftc-to-strengthen-r.html>.

³⁶ EPIC, *In re OPM Data Security Breach Litigation*, Epic.org, <https://epic.org/amicus/opm/>.

EPIC filed an amicus brief in the case, joined by forty-four technical experts and legal scholars (members of the EPIC Advisory Board).³⁷ In the brief, EPIC said that "when personal data is collected by a government agency, that agency has a constitutional obligation to protect the personal data it has obtained." 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.³⁸

Universal Guidelines on Artificial Intelligence Released

The Universal Guidelines for Artificial Intelligence, a human rights framework for AI, was released in October.³⁹ The UGAI set out 12 principles to "inform and improve the design and use of AI. The UGAI are intended to maximize the benefits of AI, to minimize the risk, and to ensure the protection of human rights." The UGAI outline rights to transparency and human determination, obligations for identification, fairness, accountability, validity, data quality, public safety, cybersecurity, termination, and prohibitions on secret profiling and unitary scoring. Over 200 experts and 50 NGOs, from 40 countries have endorsed the UGAI.⁴⁰

Since the UGAI's release, EPIC submitted comments urging the National Science Foundation to adopt the UGAI and to promote and enforce the UGAI across funding, research, and deployment of U.S. AI systems.⁴¹ Speaking to the OECD Global Strategy Group in Paris, EPIC President Marc Rotenberg recently urged OECD member countries to endorse the Universal Guidelines for AI.⁴² "Civil society recognizes that AI may help solve the world's greatest challenges - from climate change and resource scarcity to medical breakthroughs and sustainable development. But we also believe that the public must be given the opportunity to participate in the development of AI policy. And there should be guidelines at the outset that safeguard democratic values and human rights," said Mr. Rotenberg.⁴³

³⁷ Brief for EPIC and Forty-Four Technical Experts and Legal Scholars as Amici Curiae in Support of Appellants, *In re: U.S. Office of Personnel Management Data Security Breach Litigation*, Nos. 17-5217 & 17-5232 (D.C. Cir. Nov. 20, 2017), <https://epic.org/amicus/opm/in-re-OPM-EPIC-Amicus.pdf>

³⁸ EPIC, *NASA v. Nelson*, Epic.org, <https://epic.org/amicus/nasavnelson/>.

³⁹ Universal Guidelines for Artificial Intelligence (2018), <https://thepublicvoice.org/ai-universal-guidelines/>.

⁴⁰ Endorsements: Universal Guidelines for Artificial Intelligence (2018), <https://thepublicvoice.org/ai-universal-guidelines/endorsement>

⁴¹ Comments of EPIC to the NSF on Request for Information on Update to the 2016 National Artificial Intelligence Research and Development Strategic Plan (Oct. 26, 2018), <https://epic.org/apa/comments/EPIC-Comments-NSF-AI-Strategic-Plan-2018.pdf>.

⁴² Marc Rotenberg, *The Future of Innovation and Digital Transformation: Exploring Societal Impacts, Remarks at the OECD Global Strategic Group Meeting*, Epic.org (Nov. 19, 2018), <https://epic.org/privacy/ai/Remarks-OECD-CSG-Rotenberg-2018.pdf>.

⁴³ *Id.*

Pew Research Surveys: Americans Have Complicated Relationship with Facebook

Two recent surveys reveal that many Facebook users don't understand how the site's news feed works⁴⁴ and that Americans are changing their relationship with Facebook.⁴⁵ 54% of adult Facebook users have adjusted their privacy settings in the past year and 42% say they have not used the platform for at least several weeks. 53% of U.S. adults who use Facebook said that they do not understand why certain posts but not others are included in their news feed. Only 14% of Facebook users think they have "a lot" of control over the content that appears in their newsfeed, while 57% think they have "a little" control and 28% think they have no control. Public opinion polls consistently find strong support among Americans for privacy rights in law to protect their personal information from government and commercial entities.

Pew Research: Public Attitudes Toward Computer Algorithms

A new survey from the Pew Research Center "Public Attitudes Toward Computer Algorithms" found widespread concern about the fairness of automated decision making.⁴⁶ According to the Pew report, "Americans express broad concerns over the fairness and effectiveness of computer programs making important decisions in people's lives." Americans oppose the use algorithms for criminal risk assessments (56%), automated resume screening for job applicants (57%), and personal finance scores (68%). Many of the concerns in the Pew Report are addressed in the newly released Universal Guidelines for AI.

IV. EPIC's Work

EPIC Champions of Freedom Awards Dinner

EPIC will present the 2019 International Privacy Champion Award at the Computers, Privacy, and Data Protection Conference in Brussels, Belgium in January 2019. The 2018 awards were presented to Gus Hosein, director of Privacy International, and Professor Artemi Rallo, the former chair of the Spanish Data Protection Agency. The annual EPIC Champions of Freedom Award dinner and ceremony will also be held on June 5, 2019 at the National Press Club in Washington, D.C. More information is available here: <https://epic.org/june5/>.

⁴⁴ Aaron Smith, *Many Facebook users don't understand how the site's news feed works*, Pew Research (Sept. 5, 2018), <http://www.pewresearch.org/fact-tank/2018/09/05/many-facebook-users-dont-understand-how-the-sites-news-feed-works/>.

⁴⁵ Andrew Perrin, *Americans are changing their relationship with Facebook*, Pew Research (Sept. 5, 2018), <http://www.pewresearch.org/fact-tank/2018/09/05/americans-are-changing-their-relationship-with-facebook/>

⁴⁶ Aaron Smith, *Public Attitudes Toward Computer Algorithms*, Pew Research (Nov, 16, 2018), <http://www.pewinternet.org/2018/11/16/public-attitudes-toward-computer-algorithms/>.

EPIC Files Suit to Block Census Citizenship Question

EPIC has filed a lawsuit to block the addition of a citizenship question to the 2020 Census.⁴⁷ EPIC charged that the Census Bureau failed to complete multiple Privacy Impact Assessments, as required by law. Earlier this year, the Bureau abruptly announced that the 2020 census will include a question on citizenship status.⁴⁸ The decennial census has not included a citizenship question since 1950. However, the Bureau did not assess the privacy impact on census respondents, who are legally obligated to answer all questions.

As EPIC's lawsuit reveals, the Bureau recently indicated—for the first time—that personal data provided to the Census Bureau could be used "for criminal law enforcement activities."⁴⁹ The Bureau's admission raises new questions about whether citizenship information will be transmitted to the Department of Justice.

EPIC Testifies Before LIBE Committee on E-Evidence

On November 27, 2018, EPIC International Counsel Eleni Kyriakides testified before the European Parliament's LIBE Committee in a hearing on "E-Evidence in Criminal Justice Matters."⁵⁰ EPIC's testimony detailed the U.S. CLOUD Act and EPIC's recommendations to protect individual rights during cross-border access to data by law enforcement. Ms. Kyriakides stressed the need for prior judicial review, data minimization, transparency, public reporting, and individual remedies. Ms. Kyriakides said such "well-established protections should be required for cross-border orders."

EPIC submitted an *amicus brief* submitted in related Supreme Court case *United States v. Microsoft*, EPIC urged the Supreme Court to respect international privacy standards, pointing to fundamental rights obligations in international law and explaining that cross border access to data abroad should require international consensus.⁵¹ EPIC has also joined an NGO coalition to

⁴⁷ Complaint, *EPIC v. Department of Commerce & the Bureau of Census*, No. 18-2711 (D.D.C. Nov. 20, 2018), <https://epic.org/privacy/litigation/EPIC-v-Commerce-Dept-complaint-112018.pdf>.

⁴⁸ 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>.

⁴⁹ U.S. Dep't of Commerce, Privacy Impact Assessment for the CEN08 Decennial Information Technology Division (DITD) 1, 7 (approved Sep. 28, 2018), http://www.osec.doc.gov/opog/privacy/Census%20PIAs/CEN08_PIA_SAOP_Approved.pdf.

⁵⁰ *Hearing: E-Evidence in Criminal Matters*, LIBE Committee (Nov. 27, 2018), <http://www.europarl.europa.eu/committees/en/libe/events-hearings.html?id=20181112CHE05283>.

⁵¹ 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>.

establish human rights protections in the Convention on Cybercrime,⁵² and published "Digital Free for All Part Deux: European Commission Proposal on E-Evidence" in blog Just Security.⁵³

EPIC v. IRS: Federal Court Hears Arguments in Case for Trump's Tax Returns

An influential federal court has heard oral arguments⁵⁴ in EPIC's Freedom of Information Act case *EPIC v. IRS* to obtain public release of President Trump's tax returns.⁵⁵ EPIC argued before the D.C. Circuit that the IRS has the authority, under provision of U.S. law to disclose the President's returns to correct misstatements of fact concerning his financial ties to Russia. EPIC Counsel John Davisson told the court that "If ever there were a situation that justified the use of (k)(3), this is it." A majority of the American public favor the release of the President's tax returns.

EPIC Publishes "Privacy Law Sourcebook 2018"

EPIC proudly announces the 2018 edition of the *Privacy Law Sourcebook*, the definitive reference guide to US and international privacy law.⁵⁶ The *Privacy Law Sourcebook* is an edited collection of the primary legal instruments for privacy protection in the modern age, including United States law, International law, and recent developments. The *Privacy Law Sourcebook 2018* has been updated and expanded to include the modernized Council of Europe Convention on Privacy, the Judicial Redress Act, the CLOUD Act, and new materials from the United Nations. The EPIC *Privacy Law Sourcebook* also includes the full text of the GDPR. EPIC will make the *Privacy Law Sourcebook* freely available to NGOs and human rights organizations. EPIC publications and the publications of EPIC Advisory Board members are available at the EPIC Bookstore.⁵⁷

US and European Consumer Groups Urge Global Compliance with GDPR

Transatlantic Consumer Dialogue (TACD), a coalition of US and European consumer groups, wrote to ninety-five major internet companies, including Amazon and Google, seeking compliance with the EU General Data Protection Regulation as a baseline standard for all users

⁵² Letter from EPIC, et. al, to Council of Europe Secretary-General Jagland (July 4, 2018), <https://epic.org/2018/07/epic-coalition-call-for-human-.html>

⁵³ Eleni Kyriakides, *Digital Free for All Part Deux: European Commission Proposal on E-Evidence*, Just Security (), <https://www.justsecurity.org/56408/digital-free-part-deux-european-commission-proposal-e-evidence/>.

⁵⁴ EPIC, *EPIC v. IRS*, Epic.org, <https://epic.org/foia/irs/trump-taxes/>

⁵⁵ D.C. Circuit, *Oral arguments: EPIC v. IRS*, D.C. Circuit, [https://www.cadc.uscourts.gov/recordings/recordings2018.nsf/EE0853BD60003C04852583070056C76F/\\$file/17-5225.mp3](https://www.cadc.uscourts.gov/recordings/recordings2018.nsf/EE0853BD60003C04852583070056C76F/$file/17-5225.mp3) (audio recording).

⁵⁶ EPIC Privacy Law Sourcebook 2018 (Marc Rotenberg ed. 2018), https://www.amazon.com/Privacy-Sourcebook-2018-Marc-Rotenberg/dp/1732613990/ref=sr_1_1?ie=UTF8&qid=1539695250&sr=8-1&keywords=privacy+law+sourcebook+2018/

⁵⁷ EPIC, EPIC Bookstore, Epic.org, <https://epic.org/bookstore>.

worldwide.⁵⁸ TACD wrote, "Strong privacy standards should apply to everyone who uses online platforms and services no matter where they live." The letter states that "European regulation provides a solid foundation for data protection, establishing clear responsibilities for companies that collect personal data and clear rights for people whose data is gathered." The TransAtlantic Consumer Dialogue was established in 1998 and works to promote the consumer interest in EU and US policy making.

⁵⁸ Letter from EPIC, et. al, to Ninety-Five U.S. Companies (May 24, 2018), <https://www.citizen.org/media/press-releases/if-companies-can-protect-user-data-europe-they-can-protect-it-everywhere>.

Appendix: EPIC Resources

Commentaries

Eleni Kyriakides, *On Big Brother Watch v. U.K.: The Future of Surveillance at Two Europe-Wide Courts*, Just Security (October 15, 2018), <https://www.justsecurity.org/61042/big-brother-watch-v-u-k-future-surveillance-europe-wide-courts/>

Marc Rotenberg, *Democracy and the Internet*, New York Times (October 3, 2018), <https://www.nytimes.com/2018/10/03/opinion/letters/democracy-internet.html>

Marc Rotenberg and Natasha Babazadeh, *US Supreme Court Affirms Fourth Amendment in Rental Car Search, Steers Clear of Commercial Contract Limitation (Byrd v United States)*, European Data Protection Law Review (September 26, 2018), <https://edpl.lexxion.eu/article/EDPL/2018/3/23>

Ralph Nader and Marc Rotenberg, *Consumer Voices Needed in US Privacy Debate*, Nader.org (September 24, 2018), <https://nader.org/2018/09/24/consumer-voices-needed-in-us-privacy-debate/>

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