October 9, 2018

The Honorable John Thune  
Chairman  
U.S. Senate Committee on Commerce, Science, and Transportation  
512 Dirksen Senate Office Building  
Washington DC, 20510

The Honorable Bill Nelson  
Ranking Member  
U.S. Senate Committee on Commerce, Science, and Transportation  
512 Dirksen Senate Office Building  
Washington DC, 20510

Dear Chairman Thune and Ranking Member Nelson:

We write to you regarding the hearing on Consumer Data Privacy. We appreciate the Committee’s interest in this critical issue. For many years, EPIC has worked with the Commerce Committee to help protect the privacy rights of Americans. EPIC also led the efforts at the Federal Trade Commission to establish the FTC’s authority to safeguard consumer privacy. EPIC brought the complaints concerning Google and Facebook that led to the two significant consent orders in 2011. The Facebook consent order was discussed many times earlier this year when Mark Zuckerberg testified before this Committee.

Unfortunately, today the United States confronts a data protection crisis. Yesterday, the Wall Street Journal reported that Google exposed the data of 500,000 Google+ users yet failed to disclose the vulnerability for fear of reputational damage. The company has since shut down the service.

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3 FTC, 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/ftc-settles-ftc-charges-it-deceived-consumers-failing-keep ("Facebook’s privacy practices were the subject of complaints filed with the FTC by the Electronic Privacy Information Center and a coalition of consumer groups."); FTC, FTC Charges Deceptive Privacy Practices in Google’s Rollout of Its Buzz Social Network: Google Agrees to Implement Comprehensive Privacy Program to Protect Consumer Data (Mar. 30, 2011) ("Google’s data practices in connection with its launch of Google Buzz were the subject of a complaint filed with the FTC by the Electronic Privacy Information Center shortly after the service was launched.");

The week before, Facebook revealed a data breach that impacted nearly 50 million users. This all follows the revelation earlier this year that Facebook unlawfully transferred 50 million user profiles to the data mining firm Cambridge Analytica. The FTC said it was reopening the Facebook investigation in March, but still there is no report, no outcome, and no fine.

As the organization that worked with others to build the FTC’s authority to safeguard consumer privacy, we cannot stress enough how badly the current system is broken. The FTC has failed to enforce its existing judgments and has failed to seek authority to protect baseline data protection standards. The FTC’s failure to enforce consumer privacy safeguards has led not only to diminished data protection in the United States, but also to less innovation and less competition among Internet services. The FTC’s failure to enforce the original privacy rights of WhatsApp allowed Facebook to acquire user data and undermine one of the best messaging services. Even the founders of WhatsApp know this. But the FTC has said nothing.

The Commerce Committee has given the FTC a pass on its enforcement obligations and American consumers and businesses live with the consequences – increased identity theft and financial fraud, reduced competition and innovation. The current course is a glide path to catastrophe.

Sincerely,

/s/ Marc Rotenberg          /s/ Caitriona Fitzgerald
Marc Rotenberg
EPIC President

/s/ Christine Bannan          /s/ Jeff Gary
Christine Bannan
EPIC Consumer Protection Counsel

/s/ Caitriona Fitzgerald
Caitriona Fitzgerald
EPIC Policy Director

/s/ Marc Rotenberg
EPIC President

/s/ Christine Bannan
Christine Bannan
EPIC Consumer Protection Counsel

/s/ Jeff Gary
Jeff Gary
EPIC Legislative Fellow

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8 George Soros, Remarks delivered at the World Economic Forum (“as Facebook and Google have grown into ever more powerful monopolies, they have created obstacles to innovation, and they have caused a variety of problems of which we are only now beginning to become aware.”), https://www.georgesoros.com/2018/01/25/remarks-delivered-at-the-world-economic-forum/