

June 12, 2018

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

Dear Chairman Thune and Ranking Member Nelson:

We write to you regarding this week's hearing on "Oversight of the National Telecommunications and Information Administration."¹ American consumers face unprecedented privacy and security threats. The unregulated collection of personal data has led to staggering increases in identity theft, security breaches, and financial fraud in the United States.² Congress should work with the NTIA to develop meaningful safeguards for the privacy and security of Americans' personal information.

The Electronic Privacy Information Center was established in 1994 to focus public attention on emerging privacy and civil liberties issues. EPIC is a leading advocate for consumer privacy and has appeared before this Committee on several occasions, and has actively participated in the proceedings of the Federal Trade Commission ("FTC") and the Federal Communications Commission ("FCC").³ In a recent commentary, we expressed concern about the position of the U.S. Commerce Department regarding the importance of privacy protection for the digital economy.⁴ As we wrote in the *Financial Times*, "Instead of criticizing the EU effort, the commerce department should help develop a comprehensive strategy to update US data protection laws."

¹ *Oversight of the National Telecommunications and Information Administration*, 115th Cong. (2018), S. Comm. on Commerce, Science, and Transportation, <https://www.commerce.senate.gov/public/index.cfm/hearings?ID=5E218928-3606-4D3C-9D5E-B9AE09F786C2> (June 13, 2018).

² Federal Trade Comm'n, *Privacy & Data Security Update: 2017*, available at https://www.ftc.gov/system/files/documents/reports/privacy-data-security-update-2017-overview-commissions-enforcement-policy-initiatives-consumer/privacy_and_data_security_update_2017.pdf

³ See, e.g. Marc Rotenberg, EPIC Executive Director, Testimony before the U.S. Senate Committee on Commerce, Science, and Transportation, Commerce Committee, *Internet Privacy and Profiling* (June 13, 2000), <https://epic.org/privacy/internet/senate-testimony.html>; Letter from EPIC to the U.S. Senate Committee on Commerce, Science, and Transportation on Oversight of the FTC (Sept. 26, 2016), <https://epic.org/privacy/consumer/EPIC-Letter-Sen-Comm-CST-FTC-Oversight.pdf>; Letter from EPIC to the U.S. House of Representatives Committee on Energy and Commerce on FCC Privacy Rules (June 13, 2016), <https://epic.org/privacy/consumer/EPIC-FCC-Privacy-Rules.pdf>.

⁴ Marc Rotenberg, "Congress can follow the EU's lead and update US privacy laws," *Financial Times*, May 31, 2018, <https://www.ft.com/content/39044ec6-64dc-11e8-a39d-4df188287fff>.

Congress and the NTIA should prioritize updating US privacy and data protection laws. U.S. privacy law is out of date. There has always been a gap between changes in technology and business practices and the development of new privacy protections. But the gap today in the United States is the greatest at any time since the emergence of modern privacy law in the 1960s. The current approach is also unnecessarily inefficient, complex, and ineffective.

There is an urgent need for leadership from the United States on data protection. Virtually every other advanced economy has recognized the need for an independent agency to address the challenges of the digital age. Current law and regulatory oversight in the United States is woefully inadequate to meet the challenges. The Federal Trade Commission is fundamentally not a data security agency. The FTC only has authority to bring enforcement actions against unfair and deceptive practices in the marketplace, and it lacks the ability to create prospective rules for data security. The Consumer Financial Protection Bureau similarly lacks data protection authority and only has jurisdiction over financial institutions. Neither of these agencies possesses the expertise and resources needed to address data security across the country. And the Privacy and Civil Liberties Oversight Board, another agency that could help safeguard Americans and their data, lies dormant. As the data breach epidemic reaches unprecedented levels, the need for an effective, independent data protection agency has never been greater. An independent agency can more effectively utilize its resources to police the current widespread exploitation of consumers' personal information. An independent agency would also be staffed with personnel who possess the requisite expertise to regulate the field of data security.

The recent Equifax data breach that exposed the personal information of more than 145 million Americans is the latest in a growing number of high-profile hacks that threaten the privacy, security, and financial stability of American consumers. Far too many organizations collect, use, and disclose detailed personal information with too little regard for the consequences. Further, there are massive privacy and security implications of the growing "Internet of Things." Many IoT devices feature "always on" tracking technology that surreptitiously records consumers' private conversations in their homes.⁵ Companies say that the devices rely on key words, but to detect those words, the devices must always be listening. Congress and the NTIA must work together to enact concrete consumer protections that:

- Promote Privacy Enhancing Techniques (PETs) that minimize or eliminate the collection of personal information.⁶
- Ensure routine security updates for IoT devices; and
- Carefully assesses IoT deployment for critical functions, including transportation, home security, and medical devices.

We also urge the NTIA to promote "Algorithmic Transparency," which is a critical requirement to ensure fairness and accountability for automated decision-making. For decisions concerning individuals, such as employment, credit, health care, and housing, it should be a fundamental right.

⁵ EPIC Letter to DOJ Attorney General Loretta Lynch, FTC Chairwoman Edith Ramirez on "Always On" Devices (July 10, 2015), <https://epic.org/privacy/internet/ftc/EPIC-Letter-FTC-AG-Always-On.pdf>.

⁶ See Comments of EPIC, *On the Privacy and Security Implications of the Internet of Things*, FTC File No. ____ (June 1, 2013), <https://epic.org/privacy/ftc/EPIC-FTC-IoT-Cmts.pdf>.

The NTIA recently published a notice in the Federal Register seeking comments on “International internet Policy Priorities.”⁷ EPIC will submit comments in response to this notice, but the Committee should also be aware of pending NTIA action in this area. We hope that the NTIA will take actions to protect the privacy and security of American consumers and American businesses. The threats today are real and further delay places the country at enormous risk.

We ask that this letter be entered in the hearing record. EPIC looks forward to working with the Committee on these issues.

Sincerely,

Marc Rotenberg
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Caitriona Fitzgerald
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⁷ NTIA, *International internet Policy Priorities*, 83 FR 26036 (June 5, 2018), <https://www.federalregister.gov/documents/2018/06/05/2018-12075/international-internet-policy-priorities>.