

November 4, 2019

The Honorable Joshua Hawley, Chairman  
The Honorable Sheldon Whitehouse, Ranking Member  
U.S. Senate Committee on the Judiciary  
Subcommittee on Crime and Terrorism  
Dirksen Senate Office Building 224  
Washington, DC 20510

Dear Chairman Hawley and Ranking Member Whitehouse:

We write to you in regarding your hearing on “How Corporations and Big Tech Leave Our Data Exposed to Criminals, China, and Other Bad Actors.”<sup>1</sup> EPIC appreciates the Committee’s focus on data privacy. While corporations and big tech bear significant responsibility for exposing the personal data of Americans to foreign bad actors, Congress also bears responsibility. Congress’ failure to pass comprehensive baseline privacy legislation or to establish a U.S. Data Protection Agency has put Americans’ personal data at risk.

The U.S. is one of the few developed countries in the world without a data protection agency. The practical consequence is that the U.S. consumers experience the highest levels of data breach, financial fraud, and identity theft in the world. And U.S. businesses, with their vast collections of personal data, remain the target of cyber-attack by criminals and foreign adversaries. The longer the U.S. continues on this course, the greater will be the threats to consumer privacy, democratic institutions, and national security.

EPIC warned the Senate about foreign access to consumer data over two years ago. In testimony before the Senate Banking Committee, EPIC President Marc Rotenberg said:

U.S. consumers, businesses, and the U.S. government face a genuine threat from the unbounded collection of personal data without adequate legal and technical protections. This data is now the target of foreign adversaries. Two years ago it was the OPM breach. Now it is the Equifax breach. I am reluctant to imagine the consequences for the United States of the next major breach.<sup>2</sup>

But Congress has taken no action.

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<sup>1</sup> *How Corporations and Big Tech Leave Our Data Exposed to Criminals, China, and Other Bad Actors*, S. Comm. on the Judiciary, Subcomm. on Crime and Terrorism (Nov. 5, 2019), <https://www.judiciary.senate.gov/meetings/how-corporations-and-big-tech-leave-our-data-exposed-to-criminals-china-and-other-bad-actors>.

<sup>2</sup> *Hearing on Consumer Data Security and the Credit Bureaus*, S. Committee on Banking, Housing, and Urban Affairs (Testimony of Marc Rotenberg, President, EPIC) (Oct. 17, 2017), <https://epic.org/testimony/congress/EPIC-Testimony-SBC-10-17.pdf>.

Similarly, EPIC has long urged the Federal Aviation Administration to establish drone privacy rules.<sup>3</sup> EPIC sued the FAA for the agency's failure to establish drone privacy safeguards.<sup>4</sup> The Agency failed to Act. Then, last year, the Department of Defense was forced to take action after concerns about DJI, a Chinese drone manufacturer who is the largest distributor of commercial drones in the United States, accessing and disclosing U.S. data to the Chinese government.<sup>5</sup> The Secretary of Defense suspended all purchases of commercial-off-the-shelf drones.<sup>6</sup>

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. EPIC encourages Congress to prioritize updating U.S. privacy law and creating a U.S. Data Protection Agency. EPIC recently released *Grading on a Curve: Privacy Legislation in the 116<sup>th</sup> Congress*.<sup>7</sup> EPIC's report set out the key elements of a privacy law. As the Committee and Congress also considers comprehensive data privacy legislation, we urge you to review EPIC's report, attached to this statement.

We ask that this letter and the attachments be entered in the hearing record.

Sincerely,

Marc Rotenberg

Marc Rotenberg  
EPIC President

Caitriona Fitzgerald

Caitriona Fitzgerald  
EPIC Policy Director

#### Attachments

EPIC, *Grading On A Curve* (2019).

Marc Rotenberg, *America Needs a Privacy Law*, New York Times (December 25, 2018)

Marc Rotenberg, *Congress can follow the EU's lead and update US privacy laws*, Financial Times (June 1, 2018) ("Regarding innovation, it would be a critical mistake to assume that there a trade-off between invention and privacy protection. With more and more devices connected to the Internet, privacy and security have become paramount concerns. Properly understood, new privacy laws should spur the development of techniques that minimize the collection of personal data.")

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<sup>3</sup> *EPIC v. FAA*, No. 15-1075 (D.C. Cir. May 10, 2016); See also *Domestic Unmanned Aerial Vehicles (UAVs) and Drones*, EPIC, <https://epic.org/privacy/drones/>; See also EPIC, *EPIC v. FAA, Challenging the FAA's Failure to Establish Drone Privacy Rules*, <https://epic.org/privacy/litigation/apa/faa/drones/>.

<sup>4</sup> *EPIC v. FAA*, <https://epic.org/privacy/litigation/apa/faa/drones/>.

<sup>5</sup> Senator Chris Murphy, *Following Security Threats, Murphy Calls on Sec. Mattis to Ban Defense Department Use of Foreign-Made Commercial Drones* (May 8, 2018), <https://www.murphy.senate.gov/newsroom/press-releases/following-security-threats-murphy-calls-on-sec-mattis-to-ban-defense-department-use-of-foreign-made-commercial-drones-and-instead-support-us-drone-manufacturers>.

<sup>6</sup> Haye Kestello, *Department of Defense bans the purchase of commercial-over-the-shelf UAS, including DJI drones effective immediately*, DroneDJ, July 7, 2018, <https://dronedj.com/2018/06/07/department-of-defense-bans-the-purchase-of-commercial-over-the-shelf-uas-including-dji-drones/>.

<sup>7</sup> See <https://epic.org/GradingOnACurve/>.