



## Consumer Federation of America

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March 28, 2014

Nicole Wong  
Deputy Chief Technology Officer  
Office of Science and Technology Policy  
Eisenhower Executive Building  
1650 Pennsylvania Ave. NW  
Washington, DC 20502

Re: Big Data RFI

Dear Deputy Wong:

Consumer Federation of America (CFA), an association of nearly 300 nonprofit consumer organizations across the United States, offers the following brief comments in response to your office's Request for Information concerning "big data."<sup>1</sup>

The ever-increasing amount and scope of data that can be collected about or linked to individuals (which we will refer to as "personal data") has profound implications for consumers and for our society. While the collection, analysis, retention and use of personal data can bring benefits, there are also risks that must be considered and which current U.S. policy does not adequately address. As the data and its applications grow "bigger," so do our concerns in that regard.

The Administration acknowledged some of these concerns in its 2012 report about data privacy.<sup>2</sup> In the preface, President Obama noted that "Never has privacy been more important than today, in the age of the Internet, the World Wide Web and smart phones" and that much of the innovation that these new technologies have fostered "is enabled by novel uses of personal information." While the document focused on the commercial sphere, the President also mentioned the importance of these technologies in enabling individuals to engage in political discourse. Citing the need for consumer trust and the lack of a "clear statement of basic privacy principles that apply to the commercial world, and a sustained commitment of all stakeholders to address consumer data privacy issues as they arise from advances in technologies and business models,"<sup>3</sup> the report called for a Consumer Privacy Bill of Rights, embodying basic privacy principles that can be adapted in the digital era. This was envisioned as a framework not only to spur self-regulatory initiatives but as the basis for legislation that the Administration would put forward to give Americans actual rights. To date, however, no such legislation has emerged.

While we applaud the Administration for launching this new discussion about big data, we are worried that the train is leaving the station. Business models are already proliferating using big data in ways that

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<sup>1</sup> 79 FR 12251, March 4, 2014.

<sup>2</sup> *Consumer Data Privacy in a Networked World: a Framework for Protecting Consumer Privacy and Promoting Innovation in the Global Digital Economy*, <http://www.whitehouse.gov/sites/default/files/privacy-final.pdf>.

<sup>3</sup> *Id.*, see Foreword.

raise concerns about privacy, discrimination, and other issues, and it is clear that existing U.S. law does provide sufficient protection.<sup>4</sup>

Those concerns go beyond consumers and commerce, as big data can be used to categorize individuals for governmental and other purposes. CFA endorses the *Civil Rights Principles for the Era of Big Data*<sup>5</sup> recently issued by a coalition of civil rights organizations.

With continuing advances in technology, it is urgent to address these concerns. Facial recognition, for instance, is rapidly improving and is being offered today for a variety of purposes<sup>6</sup> which could lead to the loss of individual autonomy, manipulative marketing, and other undesirable consequences. The National Telecommunications and Information Administration's multistakeholder process to develop voluntary industry codes of conduct and other self-regulatory efforts, while potentially helpful, are not enough.

What we need is a comprehensive legal framework regarding personal data in the U.S. to guide the development and deployment of big data in a way that comports with our societal values. This would also help to promote U.S. trade abroad, which is presently hindered by adequate U.S. privacy laws.<sup>7</sup>

CFA is joining other groups on separate comments in response to this Request for Information. Those comments will make more detailed recommendations in specific areas.

Whatever emerges from this examination of big data, it is crucial for the U.S. Administration to acknowledge the concerns as well as the benefits and to propose concrete steps to address those concerns. This should include a restatement of the need for a comprehensive privacy law and a commitment to introduce such legislation before the end of this year. CFA would welcome the opportunity to play an active role on this and other initiatives that may come out of this exercise.

Sincerely,



Susan Grant, Director of Consumer Protection  
Consumer Federation of America

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<sup>4</sup> See, for instance, *Big Data Means Big Opportunities and Big Challenges*, by the Center for Digital Democracy and U.S. PIRG, [http://www.centerfordigitaldemocracy.org/sites/default/files/USPIRGFandCDDBigDataReportMar14\\_1.3web.pdf](http://www.centerfordigitaldemocracy.org/sites/default/files/USPIRGFandCDDBigDataReportMar14_1.3web.pdf) and *Big Data, a Big Disappointment for Scoring Consumer Credit Risk*, by the National Consumer Law Center, <http://www.nclc.org/images/pdf/pr-reports/report-big-data.pdf>.

<sup>5</sup> See <http://www.civilrights.org/press/2014/civil-rights-principles-big-data.html>.

<sup>6</sup> See new report by the Center for Digital Democracy at <http://www.centerfordigitaldemocracy.org/sites/default/files/NTIAFacialRecognitionCDDFinal032514.pdf>.

<sup>7</sup> See critical report on the US/EU Safe Harbor program at <http://www.europarl.europa.eu/document/activities/cont/201310/20131008ATT72504/20131008ATT72504EN.pdf> and European Commission report at [http://ec.europa.eu/justice/data-protection/files/com\\_2013\\_847\\_en.pdf](http://ec.europa.eu/justice/data-protection/files/com_2013_847_en.pdf). This program is meant to enable flows of EU consumers' personal information when they engage in cross-border commerce with US companies, in light of the fact that U.S. privacy law has not been deemed "adequate" to meet EU data protection requirements. It has many inherent shortcomings, however, and is not working well. How to deal with cross-border data flows given the wide gaps between U.S. and EU privacy law is also contentious issue in the Transatlantic Trade and Investment Partnership negotiations. See also CFA's July, 2013 presentation to the negotiators at <http://www.consumerfed.org/pdfs/TTIP%20presentation%207.10.13.pdf>.