

Public Interest Privacy Legislation Principles

Unregulated data collection and use in the United States has eroded public trust in companies to safeguard and use data responsibly. Surveys show that, while individuals often try to remove or mask their digital footprints,¹ people think they lack control over their data,² want government to do more to protect them,³ and distrust social media platforms.⁴

The current U.S. data privacy regime, premised largely upon voluntary industry self-regulation, is a failure. Irresponsible data practices lead to a broad range of harms, including discrimination in employment, health care, and advertising, data breaches, and loss of individuals' control over personal information. Existing enforcement mechanisms fail to hold data processors accountable and provide little-to-no relief for privacy violations.

The public needs and deserves strong and comprehensive federal legislation to protect their privacy and afford meaningful redress. Privacy legislation is essential to ensure basic fairness, prevent discrimination, advance equal opportunity, protect free expression, and facilitate trust between the public and companies that collect their personal data. Legislation should reflect at least the following ideas and principles:

1. Privacy protections must be strong, meaningful, and comprehensive

Privacy concerns cannot be fully addressed by protecting only certain classes of personal data held by some companies. Legislation should mandate fairness in all personal data processing, respect individuals' expectations for how data should be treated, provide for data portability, and include safeguards against misuse of data, including de-identified and aggregate data. Legislation should advance fundamental privacy rights and require all entities that collect, store, use, generate, share, or sell (collectively, "process") data both online and offline to comply with Fair Information Practices⁵ (collection limitation, data

¹ *The State of Privacy in Post-Snowden America*, Pew (Sept. 21, 2016), <http://www.pewresearch.org/fact-tank/2016/09/21/the-state-of-privacy-in-america>.

² Bree Fowler, *Americans Want More Say in the Privacy of Personal Data*, Consumer Reports (May 18, 2017), <https://www.consumerreports.org/privacy/americans-want-more-say-in-privacy-of-personal-data>.

³ Lee Rainie, *Americans' Complicated Feelings About Social Media in an Era of Privacy Concerns*, Pew (Mar. 27, 2018), <http://www.pewresearch.org/fact-tank/2018/03/27/americans-complicated-feelings-about-social-media-in-an-era-of-privacy-concerns>.

⁴ *Id.*

⁵ Fair Information Practices are similar to those adopted by the OECD. See OECD Privacy Framework, http://www.oecd.org/sti/ieconomy/oecd_privacy_framework.pdf.

quality, purpose specification, use limitation, security safeguards, openness, access and correction rights, and accountability) across the complete life cycle of the data. Legislation should require all data processing to be clearly and accurately explained, justified, and authorized by the individual. People should have the right to know when their data has been compromised or otherwise breached. Additionally, legislation should require entities processing data to adopt technical and organizational measures to meet these obligations, including risk assessments of high-risk data processing.

2. Data practices must protect civil rights, prevent unlawful discrimination, and advance equal opportunity

Legislation should ensure fundamental fairness of and transparency regarding automated decision-making. Automated decision-making, including in areas such as housing, employment, health, education, and lending, must be judged by its possible and actual impact on real people, must operate fairly for all communities, and must protect the interests of the disadvantaged and classes protected under anti-discrimination laws. Legislation must ensure that regulators are empowered to prevent or stop harmful action, require appropriate algorithmic accountability, and create avenues for individuals to access information necessary to prove claims of discrimination. Legislation must further prevent processing of data to discriminate unfairly against marginalized populations (including women, people of color, the formerly incarcerated, immigrants, religious minorities, the LGBTQIA/+ communities, the elderly, people with disabilities, low-income individuals, and young people) or to target marginalized populations for such activities as manipulative or predatory marketing practices. Anti-discrimination provisions, however, must allow actors to further equal opportunity in housing, education, and employment by targeting underrepresented populations where consistent with civil rights laws. Moreover, decades of civil rights law have promoted equal opportunity in brick-and-mortar commerce; legislation must protect equal opportunity in online commerce as well.

3. Governments at all levels should play a role in protecting and enforcing privacy rights

The public consistently call for government to do more, not less, to protect them from misuse of their data. Legislation should reflect that expectation by providing for robust agency oversight, including enhanced rulemaking authority, commensurate staff and resources, and improved enforcement tools. Moreover, no single agency should be expected to police all data processors; therefore, legislation should empower state attorneys general and private citizens to pursue legal remedies, should prohibit forced arbitration, and importantly, should not preempt states or localities from passing laws that establish stronger protections that do not disadvantage marginalized communities.

4. Legislation should provide redress for privacy violations

Individuals are harmed when their private data is used or shared in unknown, unexpected, and impermissible ways. Privacy violations can lead to clear and provable financial injury, but even when they do not, they may, for example, cause emotional or reputational harm; limit awareness of and access to opportunities; increase the risk of suffering future harms; exacerbate informational disparities and lead to unfair price discrimination; or contribute to the erosion of trust and freedom of expression in society. In recognition of the many ways in which privacy violations are and can be harmful, legislation should avoid requiring a showing of a monetary loss or other tangible harm and should make clear that the invasion of privacy itself is a concrete and individualized injury. Further, it should require companies to notify users in a timely fashion of data breaches and should make whole people whose data is compromised or breached.

Signed,

Access Humboldt

Access Now

Berkeley Media Studies Group

Campaign for a Commercial-Free
Childhood

Center for Democracy & Technology

Center for Digital Democracy

Center for Media Justice

Center on Privacy & Technology
at Georgetown Law

Color of Change

Common Cause

Common Sense Kids Action

Consumer Action

Consumer Federation of America

Consumers Union

Customer Commons

Demand Progress

Free Press Action Fund

Human Rights Watch

Lawyers' Committee for Civil Rights
Under Law

Media Alliance

Media Mobilizing Project

National Association of Consumer
Advocates

National Consumer Law Center

National Consumers League

National Digital Inclusion Alliance

National Hispanic Media Coalition

New America's Open

Technology Institute

Oakland Privacy

Open MIC (Open Media and Information
Companies Initiative)

Privacy Rights Clearinghouse

Public Citizen

Public Knowledge

U.S. PIRG

United Church of Christ, OC Inc.